

No. 51028

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant.

vs.

A. J. GUTZLER, F. M. McDONNELL, L. T. BARNE-
SON, J. LESLIE BARNESON and FRANK L. A.
GRAHAM, Trustees for Trumble Refining Company,
a dissolved corporation,

Appellee,

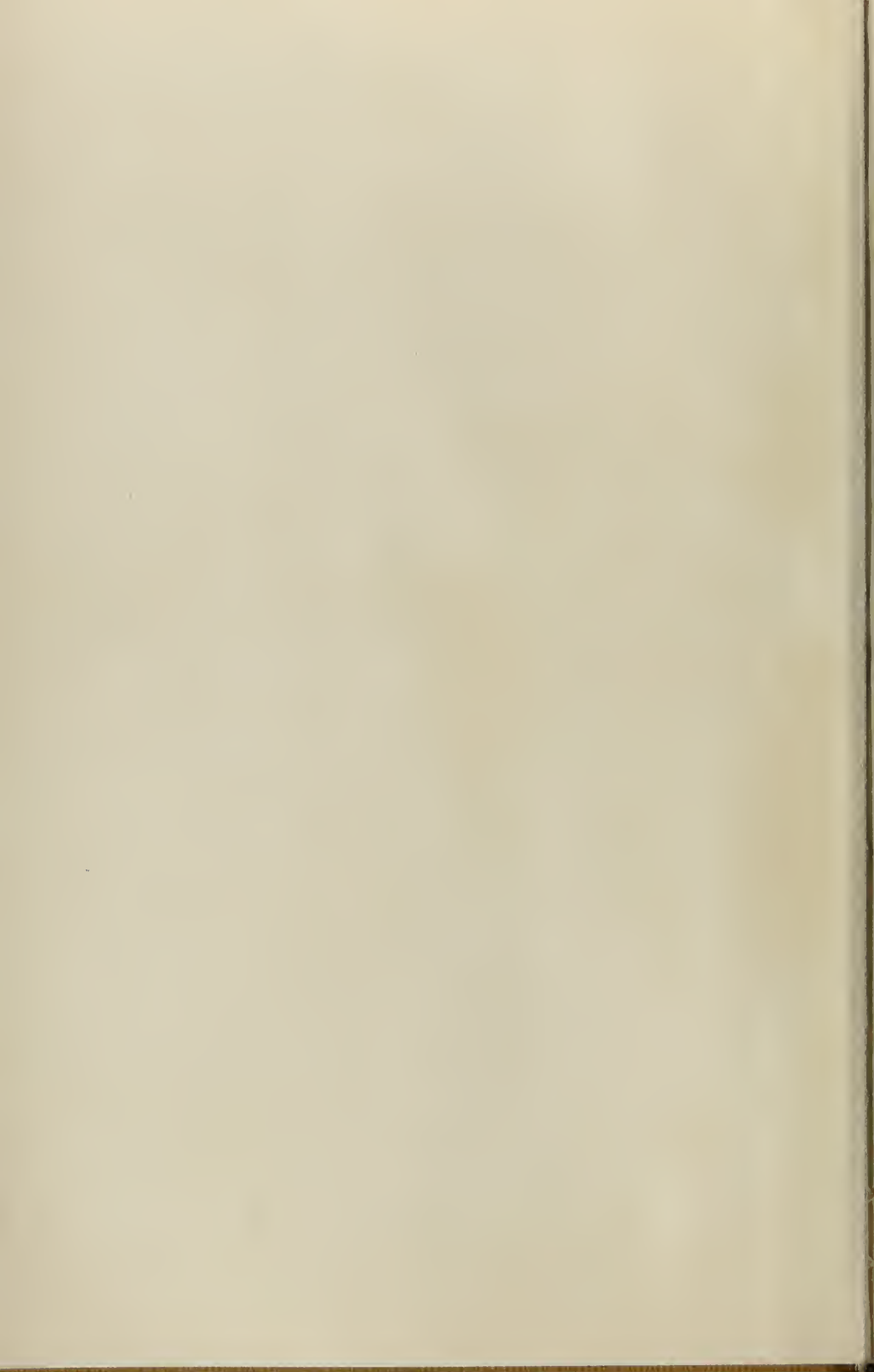
Transcript of Record

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

NOV 2 1938

PAUL H. COTTELL



No.

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant.

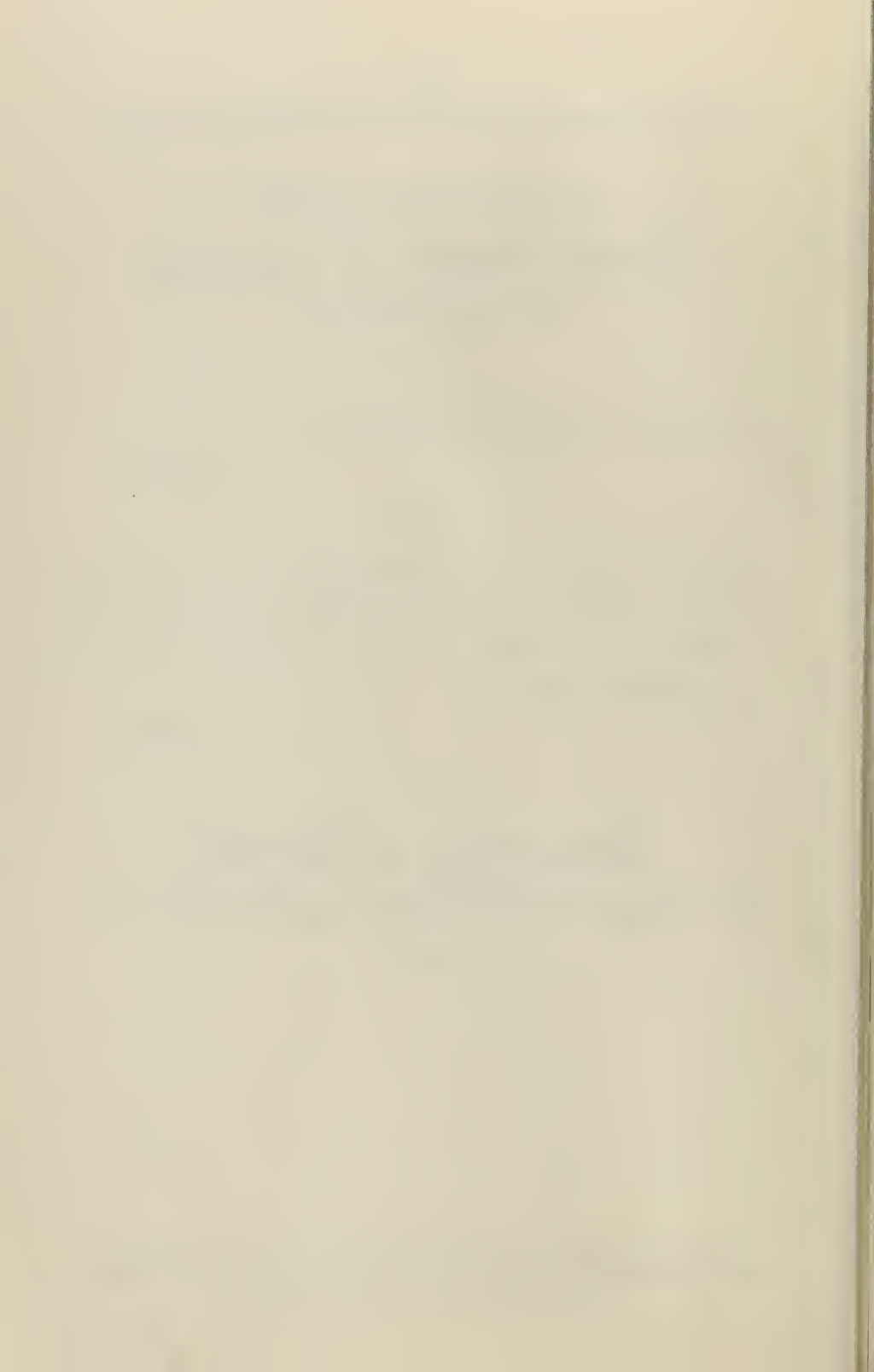
vs.

A. J. GUTZLER, F. M. McDONNELL, L. T. BARNE-
SON, J. LESLIE BARNESON and FRANK L. A.
GRAHAM, Trustees for Trumble Refining Company,
a dissolved corporation,

Appellee,

Transcript of Record

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.



INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Amendment to First Amended Petition.....	36
Answer	38
Appeal, Petition for.....	396
Assignment of Errors.....	398
Bill of Exceptions.....	61
Findings of Fact and Conclusions of Law.....	344, 361, 371
Memorandum of Conclusions.....	331
Memorandum of Points and Authorities.....	341
Motion for Arrest of Judgment and for Dismissal of the Action	339
Motion for Judgment.....	316
Motion to Amend First Amended Petition.....	315
Order Approving and Settling Bill of Exceptions.....	395
Order Dated Dec. 6, 1937, Vacating Submission.....	367
Order Dated Dec. 6, 1937, Vacating Cause.....	367
Order Dated Dec. 18, 1937, Vacating Hearing.....	368
Order Dated May 31, 1938, Rejecting Findings and Judg- ment	389
Order Extending Time to Serve and File Bill of Exceptions..	390
Order Extending Time to Serve and File Bill of Exceptions..	391
Order Extending Time and Term.....	392

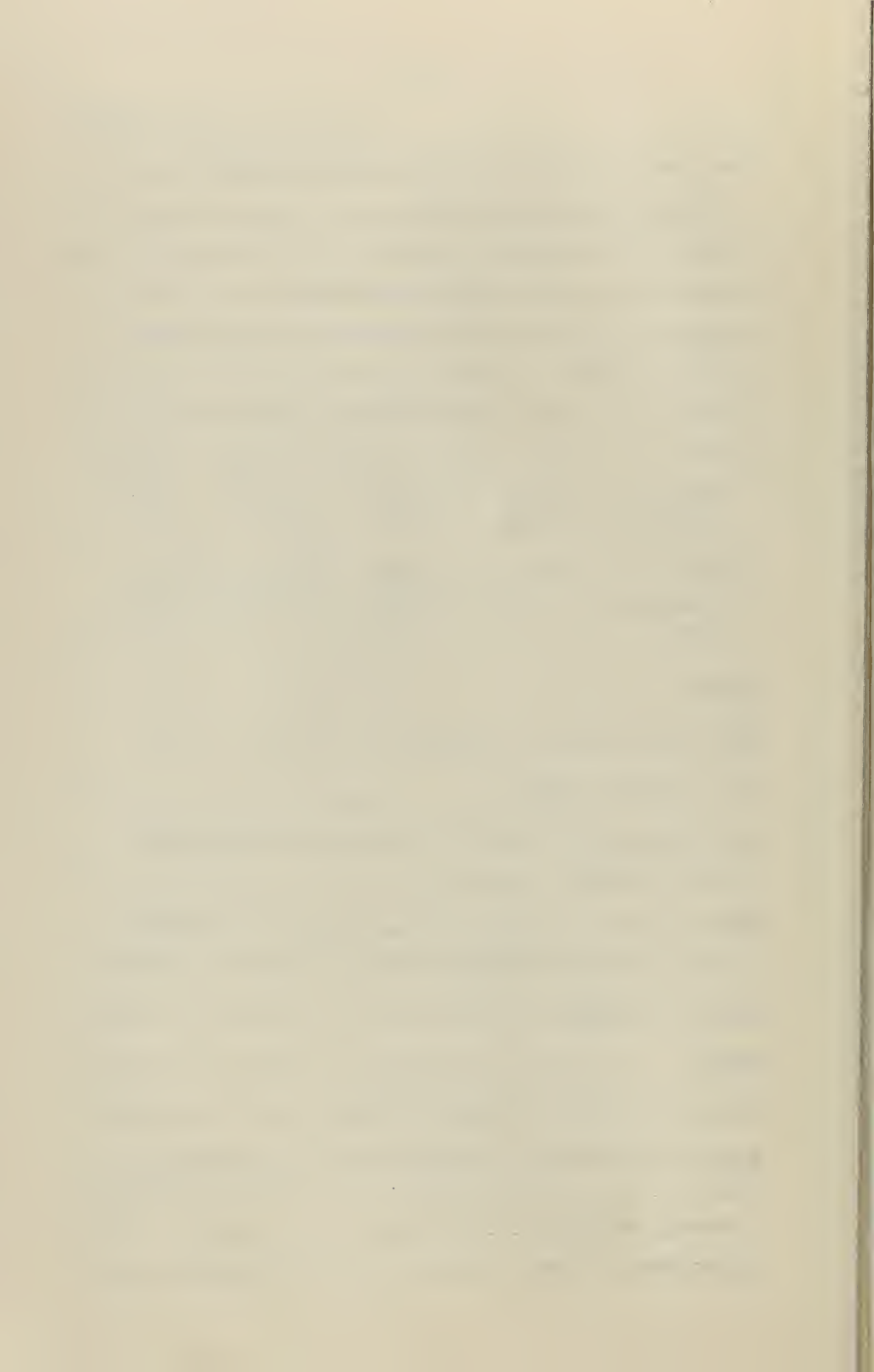
Bill of Exceptions (Continued)	PAGE
Request by Plaintiffs for Findings of Fact and Conclusions of Law	343, 360, 370
Stipulation re Approval of Bill of Exceptions.....	393
Testimony on Behalf of Plaintiffs:	
Adams, E. P.—	
Direct examination.....	166
Direct examination (resumed).....	247
Examination (by the Court).....	249
Cross-examination	284
Examination (by the Court).....	285
Cross-examination	285
Gutzler, A. J.—	
Direct examination.....	308
Cross-examination	308
McDonnell, Frank M.—	
Direct examination.....	309
Plaintiffs' Exhibit 1—Stipulation.....	61
Exhibit A—Corporation Income Tax Return.....	68
Trumble Refining Company of Arizona, Balance Sheet, December 31, 1917 and December 31, 1916.....	84
Trumble Refining Company of Arizona, Statement of Income and Profit & Loss for the Years Ended De- cember 31, 1917 and 1916 and Comparison.....	85
Exhibit B—Corporation Excess Profits Tax Return.....	86
Trumble Refining Company of Arizona, Balance Sheet, December 31, 1917 and December 31, 1916.....	96
Trumble Refining Company of Arizona, Statement of In- come and Profit & Loss for the Years Ended December 31, 1917 and 1916 and Comparison.....	97
Exhibit C—Treasury Department, Washington, D. C., Letter Dated February 21, 1920.....	98

Bill of Exceptions (Continued)	PAGE
Plaintiffs' Exhibit 1 (Continued)	
Exhibit D—Claim for Abatement.....	101
Exhibit E—Amended Corporation Income Tax Return.....	107
Exhibit F—Claim for Refund.....	138
Exhibit G—Notice	142
Exhibit H—Claim for Abatement.....	143
Exhibit I—Treasury Department, Washington, Letter Dated January 19, 1923.....	147
Exhibit J—Income and Profits Tax Waiver.....	149
Exhibit K—Letter Dated February 5, 1923.....	150
Exhibit L—Schedule of Reductions of Tax Liability and Allowance of Abatements and Credits, Income Tax Unit.....	151
Exhibit M—Letter Dated February 23, 1923.....	152
Exhibit N—Telegram Dated May 15, 1923.....	153
Exhibit O—Treasury Department Telegram, Washington, May 21, 1923.....	154
Exhibit P—Claim for Refund of Taxes Illegally Collected....	155
Exhibit Q—Letter Dated May 22, 1930.....	161
Exhibit R—Treasury Department, Washington, Letter Dated July 25, 1930.....	164
Plaintiffs' Exhibit 2—Stipulation.....	165
Plaintiff's Exhibit 3—Brief.....	167
Exhibit A—Agreement	191
Exhibit B—List of Contracts.....	201
Exhibit C—Agreement Dated April 2, 1915.....	202
Schedule A	208
Schedule B—Contracts	214

iv.

Bill of Exceptions (Continued)	PAGE
Plaintiffs' Exhibit 3 (Continued)	
Exhibit D—Copy of Extract From the President's Report for the Year 1915.....	218
Exhibit E—Letter Dated Jan. 6, 1921.....	219
Exhibit F—Letter Dated Jan. 6, 1921.....	220
Exhibit G—Letter Dated July 23, 1913.....	222
Exhibit H—Computation of Taxes.....	224
Plaintiffs' Exhibit 4—Copy of Protest.....	
Exhibit A—Affidavits of F. M. Townsend, A. J. Gutzler and M. J. Trumble.....	252
Exhibit B1—List of Contracts.....	273
Exhibit B2—List of Contracts.....	276
Exhibit C—Royalties Received	277
Exhibit D—Expenses Incurred	278
Exhibit E—Affidavit of John Barneson.....	279
Exhibit F—Affidavit of John Barneson.....	280
Plaintiffs' Exhibit 5—Decision of the United States Board of Tax Appeals	
Plaintiffs' Exhibit 6—Letter Dated Nov. 6, 1924.....	287
Statement	318
Defendant's Exhibit A—Letter Dated Aug. 5, 1930.....	320
Defendant's Exhibit B—Letter Dated Nov. 3, 1930.....	311
Defendant's Exhibit C—Letter Dated Jan. 14, 1924.....	314
Defendant's Exhibit D—Letter Dated Nov. 3, 1923.....	322
Certificate of Clerk.....	327
Citation	409
Clerk's Certificate	2

	PAGE
First Amended Petition for Recovery of Income Taxes.....	4
Exhibit "A"—Claim for Refund.....	15
Exhibit "B"—Claim for Abatement.....	20
Exhibit "C"—Certificate of Overassessment.....	22
Exhibit "D"—Western Union Telegram, Los Angeles, Calif., May 15, 1923.....	25
Exhibit "E"—Western Union Telegram, Washington DC 21	26
Exhibit "F"—Claim for Refund of Taxes Illegally Collected	27
Exhibit "G"—Treasury Department, Washington, Letter Dated May 22, 1930.....	31
Exhibit "H"—Treasury Department, Washington, Office of Commissioner of Internal Revenue, Letter Dated July 25, 1930	34
Judgment	59
Names and Addresses of Attorneys.....	1
Order Allowing Appeal.....	404
Order Dated Feb. 7, 1936, That Demurrer and Motion to Strike Stand Submitted	35
Order of Feb. 11, 1936, Overruling Demurrer and Denying Motion to Strike Out Certain Portions of Amended Complaint	37
Petition for Appeal.....	396
Praecipe	405
Praecipe for Number of Copies of Record.....	408
Request by Plaintiffs for Findings of Fact and Conclusions of Law	42
Findings of Fact.....	43
Conclusions of Law.....	57



Names and Addresses of Attorneys.

For Appellant:

BEN HARRISON, Esq.,
United States Attorney;

E. H. MITCHELL, Esq.,
Assistant United States Attorney;

EUGENE HARPOLE, Esq.,
Special Attorney for the Treasury Department,
610 South Main Street,
Los Angeles, California.

For Appellees:

THOMAS R. DEMPSEY, Esq.,

A. CALDER MACKAY, Esq.,

523 West Sixth Street,

Los Angeles, California.

UNITED STATES OF AMERICA, ss.

To A. J. GUTZLER, F. M. McDONNELL, L. T. BARNESON, J. LESLIE BARNESON and FRANK L. A. GRAHAM, Trustees for Trumble Refining Company, a dissolved corporation, and to Thomas R. Dempsey, A. Calder Mackay and Arthur McGregor, 1104 Pacific Mutual Building, Los Angeles, California, their attorneys, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 29th day of September, A. D. 1938, pursuant to a petition for Appeal and Order Allowing the same filed August 30, 1938 in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled A. J. GUTZLER, F. M. McDONNELL, L. T. BARNESON, J. LESLIE BARNESON and FRANK L. A. GRAHAM, Trustees for Trumble Refining Company, a dissolved corporation, vs. UNITED STATES OF AMERICA, No. 5767-H, wherein the United States of America is defendant-appellant and you are plaintiff-appellee to show cause, if any there be, why the Judgment in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable HARRY A. HOLLZER
United States District Judge for the Southern District of
California, this 30 day of August, A. D. 1938, and of the
Independence of the United States, the one hundred and
sixty-second

H. A. Hollzer
U. S. District Judge for the Southern
District of California.

Copies of Petition for Appeal, Order Allowing Appeal,
Assignment of Errors, Order Extending Time Within
which to Serve and File Bill of Exceptions, and Order
Extending Term and Time received, and service of copy
of above Citation are hereby acknowledged this 30th day
of August, 1938.

Thomas R. Dempsey
A. Calder Mackay
Arthur McGregor
Attorneys for Plaintiff-Appellee.

[Endorsed]: Filed Aug. 30, 1938. R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA CENTRAL DIVISION.

A. J. GUTZLER, F. M. McDON-)	
NELL, L. T. BARNESON, J. LES-	)	AT LAW
LIE BARNESON and FRANK L. A.	)	No. 5767-H
GRAHAM, Trustees for Trumble Re-)	
fining Company, a dissolved corporation,)	
	)	FIRST
Plaintiffs,	)	AMENDED
	)	PETITION
v.	)	FOR
	)	RECOVERY
UNITED STATES OF AMERICA,	)	OF INCOME
	)	TAXES.
Defendant.)	

The Plaintiffs above named complain of the Defendant and for cause of action allege:

I

That all times herein mentioned the Defendant, United States of America, was, and still is, a sovereign body politic.

II

That the Trumble Refining Company was incorporated under the laws of the State of Arizona on or about July 13, 1910 and existed as a corporation until on or about March 24, 1930. That the said Trumble Refining Company was duly and regularly qualified to do business in the State of California and its principal place of business was located at Los Angeles, California. That on or about March 24, 1930 said Trumble Refining Company was duly

and regularly dissolved and Plaintiffs are now duly appointed, qualified and acting trustees in dissolution of said corporation and are empowered and entitled to institute and maintain causes of action for and on behalf of said Trumble Refining Company.

III

That the said Trumble Refining Company from the time of its incorporation to and including the year 1917 was the owner and in possession of certain license agreements which on March 1, 1913 had a value of at least \$850,000.00 and a remaining useful life from March 1, 1913, of at least eleven years, eight months, twenty days, and was therefore entitled, in the determination of its net taxable income, to an annual deduction of at least \$72,511.90, for exhaustion of said license agreements, all of which was finally determined by the United States Board of Tax Appeals as will hereinafter more particularly appear.

IV

That the income and profits tax return so filed by the Trumble Refining Company for the calendar year 1917 showed a gross income of \$97,503.11 from which was deducted general expense of \$4,944.27 and depreciation of \$1,407.45 making a net taxable income of \$89,469.54. In determining the net taxable income as aforesaid, said Trumble Refining Company inadvertently failed and neglected to take as a deduction from income the exhaustion sustained on its license agreements in the sum of \$72,511.90, thereby overstating its net taxable income by that amount. In determining the tax liability for said year 1917, the Trumble Refining Company computed its tax under Section 209 of the Revenue Act of 1917.

V

That on or about February 21, 1920 the Commissioner of Internal Revenue advised the Trumble Refining Company that its business was of such character as normally to require a substantial capital investment and that the income was attributable to the employment of such capital. That inasmuch as a large part of the invested capital could not be included under the statutory requirements for tax purposes consideration was given under the relief provisions of Section 210 of the Revenue Act of 1917 in lieu of Section 209 shown on the return. As a result of this determination an additional tax was proposed by the Commissioner of Internal Revenue in the sum of \$6,365.00.

VI

That thereafter and on or about June 17, 1920 said Trumble Refining Company filed an amended income tax return for the year 1917 wherein it claimed a deduction from income for the exhaustion of its license agreements based upon the March 1, 1913 value thereof and disclosed as its correct tax for the year 1917 the sum of \$2,120.88; at the same time and as a part of said amended return said Trumble Refining Company filed its claim for refund, a copy of which is attached hereto, marked "Exhibit A" and made a part hereof, demanding the return to it, on account of the overpayment of taxes by it for the year 1917, of the sum of \$9,749.80. At the time and as a part of the amended return and the claim for refund it filed a claim for abatement in the sum of \$6,365.00, requesting the abatement of the additional income and excess profits taxes proposed by the Commissioner of Internal Revenue for the year 1917 as heretofore mentioned.

VII

Thereafter and between the dates of July 21 to August 17, 1921, a field investigation was made by an internal revenue agent acting on behalf of the Commissioner of Internal Revenue, of the returns filed by the Trumble Refining Company for the years 1917 to 1920, inclusive, including the amended return, claim for refund and claim for abatement for the year 1917, filed as aforesaid, and a copy of this report was forwarded to the Trumble Refining Company on or about September 14, 1921. As a result of the recommendation of the investigating officer the Commissioner of Internal Revenue, by his letter dated December 13, 1921, advised the Trumble Refining Company that the license agreements heretofore mentioned had no value for income tax purposes and that the claim for refund of \$9,749.80 and the claim for abatement of \$6,365.00 additional income and excess profits taxes for the year 1917 would be rejected.

VIII

Thereafter and on or about January 13, 1922, a demand for the additional income taxes of \$6,365.00 covered by the aforementioned claim for abatement, together with the accrued interest of \$1,082.05, aggregating \$7,447.05 was made by the Collector of Internal Revenue for the Sixth Collection District of the State of California. Subsequently thereto and on or about January 21, 1922 a second claim for abatement was filed with the Collector of Internal Revenue for the Sixth Collection District of the State of California in the sum of \$7,447.05, a copy of which is attached hereto, marked "Exhibit B" and made a part hereof.

IX

Thereafter and on or about February 1, 1922 the Trumble Refining Company filed with the Commissioner of Internal Revenue a formal protest against the proposed additional taxes as set forth in the aforementioned revenue [Amended by order of 2/7/36 M. R. Winchell.

Dep. Clerk] Sept. 14, 1921

agent's report dated ~~August 17, 1921~~ for the years 1917 to 1920, inclusive, demanding the establishment of a March 1, 1913 value of its license agreements and that a deduction from income be allowed by reason of the annual exhaustion thereof.

X

Thereafter and more particularly on January 19, 1923 the Commissioner of Internal Revenue, while considering the formal protest of Trumble Refining Company above referred to, suggested that it file an unlimited waiver of the statute of limitations within which time the Commissioner could make additional assessments for the year 1917 against it. In pursuance of such request the Trumble Refining Company on or about February 1, 1923 filed with the Commissioner of Internal Revenue an income and profits tax waiver, form 672-M, consenting to a determination and the assessment and collection of the amount of income and/or war profits taxes due under any return made by, or on behalf of Trumble Refining Company for the year 1917 irrespective of any period of limitation. Thereafter and more particularly on February 5, 1923 the Commissioner of Internal Revenue advised the Trumble Refining Company that its tax had been redetermined under the provisions of Section 210 of the Revenue Act of October 3, 1917 which resulted in an overassessment of

\$151.17. That subsequently thereto the Commissioner of Internal Revenue issued a certificate of overassessment of the sum above referred to, a copy of which is attached hereto and made a part hereof, marked "Exhibit C". In the computation of tax shown on said certificate of overassessment the Commissioner failed, neglected and refused to allow the Trumble Refining Company any deduction from its gross income for exhaustion of its license agreements hereinabove referred to.

XI

That on or about December 9, 1922 one E. P. Adams, agent of Trumble Refining Company, had an informal conference with the Commissioner of Internal Revenue and requested a redetermination of its tax liability for the year 1917 and for the other years involved in the revenue agent's report. Thereafter a formal request was made by Trumble Refining Company in its letter of February 23, 1923 to the Commissioner of Internal Revenue for the privilege of filing additional data and a hearing to be set in Washington, D. C. Subsequently thereto, and on or about May 15, 1923 Trumble Refining Company sent a telegram to the Commissioner of Internal Revenue, a copy of which is attached hereto, marked "Exhibit D" and made a part hereof, requesting that instructions be given the Collector of Internal Revenue to withhold collection pending hearing in Washington, D. C. on the aforementioned claims for refund, protests, etc. On May 22, 1923 the Commissioner of Internal Revenue advised the Trumble Refining Company by telegram, a copy of which is attached hereto and marked "Exhibit E", that he had no authority to instruct the Collector to accept the abatement claim to replace the claim rejected, but that confer-

ence might be arranged on 1917 case if formal protest was filed. Thereafter on May 22, 1923 said Trumble Refining Company paid under protest to the Collector of Internal Revenue the sum of \$7,860.19 covering the additional taxes of \$6,365.00 as aforesaid and accrued interest thereon of \$1,646.36. That acting in conformity with the telegraphic instructions of the Commissioner of Internal Revenue the Trumble Refining Company on or about April 29, 1924 filed a formal protest against the action of the Commissioner of Internal Revenue on the assessment of additional taxes as aforesaid for the year 1917 and subsequent years. This protest was considered by the Committee on Appeals and Review of the Commissioner's office on or about May 7, 1924. On July 14, 1924 the Committee on Appeals and Review recommended to the Commissioner of Internal Revenue that the March 1, 1913 value of the license agreements held by the Trumble Refining Company be fixed at \$160,000.00 and that amortization of this sum be allowed, based on the remaining time the agreements had to run.

XII

That the determination of the 3/1/13 value of the license agreements owned by Trumble Refining Company, and the amount of exhaustion allowable as a deduction from income, was an issue involved in all years from 1917 to 1920, covered in the last above mentioned protest. That on or about November 19, 1928 the United States Board of Tax Appeals in the case of entitled Trumble Refining Company of Arizona, Petitioner, vs. Commissioner of

Internal Revenue, Respondent, Docket No. 11763, held that the Trumble Refining Company was the owner on March 1, 1913 of license agreements having a value of \$850,000.00 on which it was entitled to take annual deductions for depreciation thereof based upon a life from that day of eleven years, eight months and twenty days and held that said Trumble Refining Company was entitled to an annual deduction for exhaustion of said license agreements in the sum of \$72,511.90. In due course of time and on the 30th day of October, 1929 the Board of Tax Appeals entered its final order determining that the Trumble Refining Company was entitled to an annual deduction in the sum of \$72,511.90 for exhaustion of its license agreements. That neither the Trumble Refining Company nor the Plaintiffs took an appeal from the Board's decision, and it became final on the 30th day of October, 1929.

XIII.

That on or about April 25, 1929 said Trumble Refining Company filed with the Commissioner of Internal Revenue an amended claim for refund, a copy of which is attached hereto, marked "Exhibit F" and made a part hereof, claiming the total amount of taxes paid by it as aforesaid for the year 1917. This claim for refund was accepted by the Commissioner as an amendment to the original claims theretofore made and filed by the Trumble Refining Company. That Taxpayer was advised by Commissioner's letter dated May 22, 1930, a copy of which is marked "Exhibit G", attached hereto and made a part hereof, that since the Commissioner had not acquiesced in the

decision of the United States Board of Tax Appeals for the years 1918, 1920, 1921, 1922, 1923, Docket Numbers 11763, 17492, 26434, and 32151 (14 BTA 38), Taxpayer's contention for depreciation of license agreements could not be allowed for the year 1917. That on July 25, 1930 a letter was written to the Taxpayer, a copy of which is marked "Exhibit H", attached hereto and made a part hereof, informing it that its claim for refund for the year 1917 was rejected. That by reason of the action taken by the Commissioner of Internal Revenue and his agents, Taxpayer's claims for refund and abatement were reopened, reconsidered, and kept before him at least until July 25, 1930, the date when the Taxpayer was advised that the amended claim for refund for the sum of \$17,764.08 was rejected as aforesaid.

XIV

That neither said John P. Carter, nor said Rex B. Goodcell are at the commencement of this suit in the employ of the Federal Government in the capacity of Collector of Internal Revenue for the Sixth Collection District, said John P. Carter having resigned on the 5th day of March, 1922 and Rex B. Goodcell having resigned on the 5th day of April, 1926.

XV

That no action upon the claim hereinbefore referred to, other than as herein set forth, has been taken before Congress or before any of the departments of the government of the United States, or in any court other than by this amended petition filed herein; that no assignment or trans-

fer of said claim, other than by operation of law as hereinabove stated, has ever been made and Plaintiffs are the sole owners thereof; that Plaintiffs are justly entitled to the amount herein claimed from the Defendant, and there is no just credit or offset against said claim which is known to the Plaintiffs.

XVI

That notwithstanding the foregoing and the fact that the Trumble Refining Company was the owner on March 1, 1913 of license agreements having a value of \$850,000.00 and a remaining life of eleven years, eight months and twenty days, and notwithstanding that it was entitled to an annual deduction for the exhaustion of said license agreements in the sum of \$72,511.90, the Defendant has failed, neglected and refused to pay said Trumble Refining Company, or to said Plaintiffs or any of them the amounts overpaid by said Trumble Refining Company for the year 1917 as aforesaid and that the full amount thereof, to wit, the sum of \$18,235.68 is now due and owing to Plaintiffs from the Defendant, together with interest as provided by law from the dates the respective amounts were paid.

WHEREFORE, the Plaintiffs pray for judgment against the Defendant in the sum of \$18,235.68, together with interest as provided by law and for such other and further relief as to the Court may seem meet and proper in the premises.

Thomas R. Dempsey
A. Calder Mackay
Attorneys for Plaintiffs

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

A. J. Gutzler, F. M. McDonnell and Frank L. A. Graham being first duly sworn, depose and say that they are three of the Trustees named as Plaintiffs in the attached Petition and are authorized to verify the same; that they have read said Petition and are familiar with its contents and that they verily believe that the facts therein alleged are true and correct.

A. J. Gutzler (Signed)

F. M. McDonnell (Signed)

Frank L A Graham (Signed)

Subscribed and sworn to before me this 20th day of
 December, 1934.

Leo R. Howley (Signed)

Notary Public in and for said County and State

[Seal]

(Exhibit "A")

Treasury Department,
U. S. Internal Revenue
Form 46—March 1919.

Date of Filing
to be

CLAIM FOR REFUND

Taxes Paid in Excess

IMPORTANT

State of.....) This claim should be forwarded
) ss. to the Collector of Int. Rev.
County of.....) from whom notice of assess-
ment was received.

TRUMBLE REFINING COMPANY OF ARIZONA
HIGGINS BUILDING, LOS ANGELES, CAL.

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to said claim are true and complete.

1. Business engaged in by claimant Leasing use of Refining Process
2. Character of assessment or tax Income and Profit Taxes—1917
3. Amount of tax paid \$11,870.68 Taxable year 1917
4. Portion of No. 3 claimed
as a refund \$ 9,749.80
5. Unpaid assessment
against which credit is
asked \$..... Taxable year

Deponent verily believes that the amount stated in item 4 should be refunded, and claimant now asks and demands refund of said amount for the following reasons:

(State facts regarding alleged overpayment)

We hereby claim refund of tax paid for the reasons set forth in letter attached hereto.

Signed

TRUMBLE REFINING COMPANY

A. J. Gutzler, Sec'y

Sworn to and subscribed before me this
17 day of June, 1920

Louis W. Gratz

Notary Public

(Title)

(Attached to Exhibit "A")

Los Angeles, California

June 16, 1920.

IT:T:SM

EMA—48751098

Mr. G. V. Newton,

Acting Assistant to the Commissioner

of Internal Revenue,

Treasury Department, Washington, D. C.

Dear Sir:

We acknowledge receipt of your letter of February 21, 1920 with reference to our Income and Excess Profits Tax returns for the year ended December 31, 1917.

We note your decision that our business should be classified as a concern normally requiring a substantial capital investment and that therefore assessments, under provision of Section 209 of the Act of October 3, 1917, had been disallowed.

Before filing this return we endeavored to secure from your department a decision such as the above to guide us in the preparation of the return but were unable to do so. However, regulations subsequent to the date of filing our 1917 return had already led us to the conclusion that we were in error in filing under Section 209 and the returns for 1918 and 1919 were filed in accordance with the regular provisions governing returns of concerns with invested capital.

We have prepared and submit herewith a revised return for 1917, the total tax on which amounts to \$2,120.88. This amount differs from the amount of tax calculated by you principally because of the fact that we have deducted

from income previously reported depreciation on account of the expiring life of the royalty contracts in the amount of \$54,121.42, being one-fifteenth of the fair market value of said contracts on March 1, 1913.

We respectfully request a refund of the amount of \$9,749.80, representing the difference between the amount paid, viz., \$11,870.68, and the tax shown in the amended return attached hereto, \$2,120.88. We also claim abatement of additional tax of \$6,365.00 assessed in accordance with your letter.

In order that you may have complete information with which to review the attached amended return, we submit the following facts with respect to the organization and history of this company.

The Trumble Refining Company was incorporated July 13, 1910 with an authorized capital stock of \$5,000,000.00, divided into 4,000,000 shares of common stock of \$1.00 each and 1,000,000 shares of preferred stock at \$1.00 each.

The Company immediately acquired from M. J. Trumble and F. M. Townsend all their rights in certain patents covering a process for refining petroleum, issuing in payment therefor 1,951,960 shares of common stock and 518,400 shares of preferred stock. Subsequently there was sold 1,248,040 shares of common stock and 281,600 shares of preferred stock for a consideration of \$135,355.25, making a total outstanding capital stock of 3,200,000 common and 800,000 preferred.

The proceeds from the sale of stock were expended in the development of patents or in obtaining patents in foreign countries. By the year 1913, numerous contracts had been entered into for the use of these patents, and for the

year 1913 the net income of the company amounted to \$30,438.06, and for 1914, \$39,860.49.

In 1915 the Company sold to the Shell Company for \$1,000,000.00 all of its letters patents of the United States and patents pending in the United States, together with all foreign rights thereto, the company retaining all contracts which were then in existence, representing business which had been developed. These contracts were entered on the books at a value of \$811,821.36, which was considered a fair value by the officers of the company, as this asset would not have been sold for less than that figure at the time. This value is substantiated by subsequent royalties received therefrom as follows:

Year 1916,.....	\$94,475.33
Year 1917,.....	96,499.59
Year 1918,.....	80,456.50
Year 1919,.....	84,761.37

From the date of sale of the patent rights, the company was in process of liquidation, as these patents had an average life from March 1, 1913 of 15 years, and at the end of that time royalties from the contracts would cease.

The value of these contracts, \$811,821.36, should therefore be amortized over this period at the rate of \$54,121.44 annually, to insure the return of the capital to the stockholders.

If the facts disclosed in this claim will not afford full relief and refund of the amount claimed, we respectfully request a full investigation of this claim before final action is taken.

Yours very truly,
A. J. GUTZLER

(Exhibit "B")

TREASURY DEPARTMENT
U. S. INTERNAL REV
Form 47 — Revised May, 1920
Ed. 250,000

Date of Filing to be
.....

CLAIM FOR ABATEMENT

Taxes Erroneously or Illegally Assessed

IMPORTANT

State of California) This claim should be for-
) ss: warded to the Collector of
County of Los Angeles) Int. Rev. from whom
notice of assessment was
received.

TRUMBLE REFINING COMPANY

(Name of claimant)

HIGGINS BUILDING, LOS ANGELES,
CALIFORNIA

(Address of claimant; give street and number as
well as city or town, and State.)

This deponent being duly sworn according to law, de-
poses and says that this claim is made on behalf of the
claimant named above, and that the facts stated below with
reference to said claim are true and complete:

1. Business engaged in by claimant Leasing use of
refining process
2. Character of assessment or tax Additional income
and excess profits taxes for 1917 and interest
3. Amount of assessment \$ 7,447.05
4. Amount now asked to be abated \$ 7,447.05

Deponent verily believes that the amount stated in item 4 should be abated, and claimant now asks and demands abatement of said amount for the following reasons:

The additional tax of \$6,365.00 arose from an office audit of the returns of this corporation. An examination of the books of this company in connection with the determination of our tax liability for the years 1917 to 1920, inclusive, was completed by Internal Revenue Agent C. F. Degele on September 26, 1921. A statement of facts has been prepared for consideration by the Field Audit Division in connection with the audit of the revenue agent's report, which statement shows that this company is entitled to a refund.

Under the above conditions it is respectfully requested that the additional tax and interest arising from the office audit (now superceded) be abated.

Signed:

TRUMBLE REFINING COMPANY
F. M. TOWNSEND, PRES.

Sworn to and subscribed before me this
21st day of January, 1922

Pearl Tralle

Notary Public in and for the County
of L. A., State of Cal

(Title)

(Exhibit "C")

TREASURY DEPARTMENT

Washington

Office of

Commissioner of Internal Revenue

Income Tax Unit

IT:SA:SM

HSD-846

CERTIFICATE OF
OVERASSESSMENT

Number: 308813

Allowed: \$151.17

Rejected: \$

Trumble Refining Co. of Arizona

Higgins Building,

Los Angeles, California.

Sirs:

An audit of your income tax return for 1917, Form 1031-1103 and examination of related claim (if any), indicates that the amount of tax assessed to you for this years was in excess of the amount due:

You are advised, that your tax has been redetermined under the provisions of Section 210 of the Revenue Act of October 3, 1917.

Adjustment of Net Income

Net income as disclosed by the books	\$87,562.05
Add: 1916 income tax	1,654.06
	<hr/>
	\$89,216.11
Less: Depreciation allowed	488.28
	<hr/>
Corrected net income	\$88,727.83

(See Page 2 attached)

The amount of the overassessment will be applied as follows:

1. If the tax has not been paid, the amount will be abated by the Collector of Internal Revenue for your district.

2. If the tax has been paid, the amount of the overpayment will either be credited against the tax due (if any) on income returns of years other than that on which the overpayment was made; or

3. The balance (if any) of the overpayment is refunded to you by check of the Treasury Department, forwarded herewith.

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit, from the date

Respectfully,

E. W. CHATTERTON,
Deputy Commissioner.

By S. ALEXANDER
Head of Div.

Schedule Number: 4677

District: 6th Cal

Amount abated: \$151.17-May-1920. P30.L4

Amount credited: \$

Year: 1918

Account Number: May-p198.L13

Amount refunded: \$

Interest: \$

Instructions Executed

Apr 23, 1923

Signature

Rex B. Goodcell
Collector Int. Rev.

- Page 2 -

Trumble Refining Company of Arizona

Computation of Tax

Excess profits tax		\$13,575.36
Net Income	\$88,727.83	
Less: Excess profits tax	13,575.36	
	<hr/>	
Amount taxable at 2%	75,152.47	1,503.05
Amount taxable at 4%	75,152.47	3,006.10
		<hr/>
Total tax assessable		\$18,084.51
Tax previously assessed March 1918, Page 198, Line 13		11,870.68
May 1920, Page 30, Line 4		6,365.00
		<hr/>
Total tax previously assessed		\$18,235.68
Total tax assessable		18,084.51
		<hr/>
Overassessment		\$ 151.17

(Exhibit "D")

WESTERN UNION TELEGRAM

PAID - CHARGE Haskins & Sells,
Los Angeles, Calif.

May 15, 1923.

Commissioner of Internal Revenue,
Washington, D. C.

Referring our letter February twenty-third file IT COLON SA COLON SM DASH HDD DASH EIGHT FOUR SIX STOP Local collector demands payment nineteen seventeen additional taxes six thousand two hundred thirteen eighty three and states it will be necessary to have wire authority from you to withhold collection pending hearing requested our letter. In view of understanding at informal conference December ninth and fact that questions involved in nineteen seventeen affect all years, please instruct collector withhold collection pending conference and advise us date set for such conference at which all years may be considered STOP We have filed bond with collector in amount one hundred fifty per cent of tax.

TRUMBLE REFINING COMPANY
OF ARIZONA

(Exhibit "E")

WESTERN UNION TELEGRAM

311

DB71 45 2 EXTRA COLLECT NL

WASHINGTON DC 21

TRUMBLE REFINING CO OF ARIZONA

AN ANSWER 15 CARE 1 B WU LOSANGELES
CALIF

REPLY TELEGRAM FIFTEENTH NO AUTHOR-
ITY TO INSTRUCT COLLECTOR ACCEPT
ABATEMENT CLAIM TO REPLACE CLAIM RE-
JECTED CONFERENCE MAY BE ARRANGED ON
NINETEEN SEVENTEEN CASE IF FORMAL
PROTEST IS FILED BUT IS IMPRACTICABLE
ON LATER YEARS UNTIL INFORMATION SUB-
MITTED IS CONSIDERED AND AUDIT COM-
PLETED

E W CHATTERTON DEPUTY COMMISSIONER.

(Exhibit "F")

(EXECUTE SEPARATE FORM FOR EACH
TAX PERIOD)

Treasury Department
Internal Revenue Service
Form 843 – Jan., 1922
Comptroller General U. S.
January 18, 1922

Collector's Notation
District

.....

IMPORTANT

File with Collector of
Internal Revenue where
assessment was made.
Not acceptable unless
completely filled in.

Account Number

.....

Date received
4/25/29

.....

Collector of Int.
Revenue

CLAIM FOR

.....ABATEMENT OF TAX ASSESSED

.....CREDIT AGAINST OUTSTANDING ASSESS-
MENTS

X REFUND OF TAXES ILLEGALLY COL-
LECTED

.....REFUND OF AMOUNTS PAID FOR STAMPS

Used in Error or Excess

Date received by Administrative Unit

.....

State of California)
) ss.
 County of Los Angeles)

NOTICE TO COLLECTOR

Collector must indicate in block above the kind of claim,
 except in Income Tax cases

TRUMBLE REFINING COMPANY OF
 ARIZONA

TYPE (Name of taxpayer or purchaser of stamps)
 OR 756 SUBWAY TERMINAL BUILDING
 PRINT (Residence—give street and number as well as
 city and State)

LOS ANGELES, CALIFORNIA
 (Business address)

This deponent, being duly sworn according to law, de-
 poses and says that this statement is made on behalf of
 the taxpayer named, and that the facts given below with
 reference to said statement are true and complete:

	Period	Year
1. Business in which engaged		
Licensing Patents	January 1	1917
2. Character of assessment or tax		
Income Tax	to December 31	- 17
3. Amount of assessment or stamps pur- chased		\$17,764.08
4. Reduction of Tax Liability requested (Income and Profits Tax)		17,764.08
5. Amount to be abated.....		
6. Amount to be refunded (or such greater amount as is legally refund- able)		17,764.08

7. Dates of payment (see Collector's receipts or indorsements of canceled checks) Mar 15, June 15, Sept 15 & Dec 15, 1918
8. District in which return (if any) was filed Los Angeles, California
9. District in which unpaid assessment appears.....
10. Amount of overpayment claimed as credit.....
11. Unpaid assessment against which credit is asked; period from.....to.....

Deponent verily believes that this application should be allowed for the following reasons:

Refund due in accordance with decision of U. S. Board of Tax Appeals, Docket Nos. 11763, 17492, 26434 and 32151, allowing amortization of patent rights and royalty contracts of \$72,511.90 annually. This claim filed in accordance with provisions of Section 252 of Revenue Act of 1921 and Section 248 C of 1926 Act, and rulings covering by IT: 1717 CB December 1923, page 247; IT: 1870 and IT: 1871 CB. December 1923, pages 248 and 249, also IT: 2066 CB. December 1926, Page 318.

See statement attached for computation
(Attach additional sheets if necessary)

Signed:

TRUMBLE REFINING CO OF ARIZONA

By A. J. Gutzler, Secretary

Sworn to and subscribed before me this 24 day of April, 1929

C. M. Enns

Notary Public

(Title)

(Attached to Exhibit "F")

YEAR ENDED DECEMBER 31, 1917

Net Income as adjusted by Commissioner		\$88,727.83
Depreciation of license agreements as fixed by Board's Decision		72,511.90
		<hr/>
Net Taxable Income		16,215.93
Excess Profits Tax \$16,215.93, less \$3,000.00 exemption \$13,215.93 @ 8% Section 209 of the 1917 Act.		1,057.27
		<hr/>
		\$15,158.66
Taxable @ 20%	\$ 303.17	
“ @ 40%	606.35	
Excess Profits Tax	1,057.27	
	<hr/>	
Adjusted Income Tax		1,966.79
Tax paid as per original return	11,870.68	
Additional tax assessed May, 1920	6,365.00	
Less over-assessment letter #308813, February 24, 1923	151.17*	
	<hr/>	
Tax Paid		18,084.51
		<hr/>
Refund due Petitioner		16,117.72
Interest paid on additional Assessment of \$1,213.83 paid May 22, 1923		1,646.36
		<hr/>
TOTAL REFUND DUE TAXPAYER		\$17,764.08

*In red.

(Exhibit "G")

TREASURY DEPARTMENT

Washington

Office of

May 22, 1930

Commissioner of Int. Rev.

Address Reply to
Commissioner of Int. Rev.

and refer to

IT:AR:G-4

TCC

Trumble Refining Company of Arizona
756 Subway Terminal Building,
Los Angeles, California.

Sirs:

The following claims for refund of income and profits taxes have been examined and will be rejected for reasons stated below:

Year	Amount
1913	\$ 304.38
1914	348.54
1915	725.11
1916	1,450.24
1917	17,764.08
1919	760.51
1920	1,463.35
1922	2,298.81
1923	2,298.81

All of the above claims are based upon the contention that you are entitled to an annual deduction from income of \$72,711.90 for depreciation of license agreements in

view of the decision rendered in your case for the years 1918, 1920, 1921, 1922 and 1923 by the United States Board of Tax Appeals, Docket Numbers 11763, 17492, 26434 and 32151, 14 Board of Tax Appeals, 348, wherein you were allowed a March 1, 1913 value of \$850,000.00 on certain license agreements for depreciation purposes resulting in an annual deduction of \$72,511.90 based upon an average life of 11 years, 8 months and 20 days as at March 1, 1913.

Since the Commissioner has not acquiesced in the decision referred to above your contention cannot be allowed for those years which were not pending before the Board, namely, 1913, 1914, 1915, 1916, 1917 and 1919.

The claims for the years 1913, 1914, 1915, 1916, and 1919, which you contend were filed in accordance with the provisions of sections 252 and 284(c) of the Revenue Acts of 1921 and 1926, respectively, are barred by the statute of limitations. The deduction for depreciation of license agreements, if allowable for those years, represents a recovery through income of realized appreciation and as such does not result in any reduction of your invested capital for the years 1917 to 1921, inclusive. Furthermore, your invested capital has not been reduced due to the failure to take such deductions in the prior years. The provisions of section 252 relating to a decrease in the invested capital for failure to take adequate deductions in previous years, and section 284(c) which relates to the same matter are, therefore, not applicable. Since no tax was paid for any of the years 1913, 1914,

1915, 1916, and 1919 within four years of the filing of the claim, the statute of limitations has run and no refund can be made for those years.

For the years 1920, 1922 and 1923 the deduction for depreciation of license agreements in the amount of \$72,711.90 has been allowed in the adjudication of your tax liability for each of those years in accordance with the decision of the Board. The contentions set forth in your claims for these years having been allowed, no further adjustments are necessary.

If you do not acquiesce in the proposed action relative to your claims for the years 1913, 1914, 1915, 1916, 1917 and 1919, and desire a hearing in the Unit at Washington, D. C., such hearing will be granted if written request is made therefor within thirty days from the date of this letter.

Page 2

If a hearing is not requested, the rejection of all of your claims will be officially scheduled at the expiration of the period indicated.

Respectfully,

DAVID BURNET,
Deputy Commissioner.

By H. B. Robinson
Head of Division

(Exhibit "H")

TREASURY DEPARTMENT
WASHINGTON

Office of
COMMISSIONER OF INTERNAL REVENUE

IT:C:CC—

July 25, 1930

Trumble Refining Company of Arizona,
756 Subway Terminal Building,
Los Angeles, California.

In re: Refund Claims for Years 1913 to 1917, incl.
1919, 1920, 1922, 1923.

Amounts: \$304.38, \$348.54, \$725.11,
\$1,450.24, \$17,764.08, \$760.51, \$1,463.35,
\$2,298.81, \$2,298.81.

Sirs:

Your claims for refund of taxes, above referred to, were disallowed by the Commissioner on a schedule dated July 25, 1930.

Respectfully,

DAVID BURNET,
Deputy Commissioner.

By T. F. Langley,
Head of Division.

[Endorsed]: Filed Dec. 21, 1934. R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk.

At a stated term, to-wit: The February term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the court room thereof, in the City of Los Angeles, California, on Friday, the seventh day of February, in the year of our Lord one thousand nine hundred and thirty-six,

Present:

HONORABLE Harry A. Hollzer District Judge

A. J. GUTZLER, et al,)	
	Plaintiffs)
	v.	) No. 5767-H-Law
UNITED STATES OF AMERICA,)	
	Defendant.)

This cause coming on for hearing on Demurrer to First Amended Petition and for hearing on Motion to Strike from First Amended Petition for the Recovery of Income Taxes; A. Calder Mackay, Esq., appearing for the plaintiffs, files Amendment to the First Amended Petition, by consent, and it is stipulated Demurrer may be interposed to Amended Complaint as amended, following which the said A. Calder Mackay, Esq., makes a statement to the Court; Eugene Harpole, Esq., Special Attorney for the Bureau of Internal Revenue, and E. H. Mitchell, Assistant U. S. Attorney, appearing for the defendant, and the First Amended Petition is thereupon further amended by interlineation by the Clerk by order of the Court; whereupon, it is ordered that Demurrer and Motion to Strike stand submitted.

[TITLE OF DISTRICT COURT AND CAUSE.]

AMENDMENT TO FIRST AMENDED PETITION

Come now the plaintiffs in the above entitled case and respectfully request this Honorable Court to permit plaintiffs to amend their First Amended Petition by adding at the end of Paragraph III thereof the following:

That on or about March 15, 1918 the Trumble Refining Company filed its income and profits tax return for the year 1917 with John P. Carter, who was then the duly appointed, qualified and acting Collector of Internal Revenue for the United States of America for the Sixth Collection District located at Los Angeles, State of California, and said Trumble Refining Company paid to said John P. Carter the amount shown to be due in said return, to wit, the sum of \$11,870.68, which was paid on or about June 12, 1918.

Thomas R. Dempsey
A. Calder Mackay
Attorneys for Plaintiffs

[Endorsed]: Filed Feb. 7, 1936 R. S. Zimmerman,
Clerk, By M. R. Winchell Deputy Clerk

At a stated term, to-wit: the February term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the 11th day of February, in the year of our Lord one thousand nine hundred and thirty-six

Present:

The Honorable Harry A. Hollzer District Judge.

A. J. GUTZLER, et al,)	
	)	Plaintiffs,
v.	)	No. 5767-H-Law
UNITED STATES OF AMERICA,)	
	)	Defendant.

In conformity with the memorandum this day filed, it is ordered that the demurrer to the amended complaint as amended be over-ruled and the motion to strike out certain portions of said amended complaint be denied.

An exception is allowed to the defendant.

[TITLE OF DISTRICT COURT AND CAUSE.]

ANSWER

Comes now the United States of America by and through its attorneys Peirson M. Hall, United States Attorney for the Southern District of California, E. H. Mitchell, Special Assistant, United States Attorney for the same District, and Eugene Harpole, Special Attorney for the Treasury Department and for answer to the First Amended Petition in the above-entitled action admits, denies, and alleges as follows:

I

The allegations of paragraph I of the First Amended Petition are admitted.

II

Answering the allegations of paragraph II of the First Amended Petition the defendant alleges that it has not sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof and therefore denies the same.

III

The allegations of paragraph III of the First Amended Petition are denied.

IV

Answering the allegations of paragraph IV of the First Amended Petition defendant alleges that it has not sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof and therefore denies the same.

V

The allegations of paragraph V of the First Amended Petition are admitted.

VI

Answering the allegations of paragraph VI, defendant admits that on or about June 17, 1920, *Trumbull* Refining Company filed an amended income tax return for the year 1917, and that at the same time said corporation filed a claim for refund; but all the other allegations of paragraph VI are denied.

VII

Answering the allegations of paragraph VII of the First Amended Petition defendant admits that the Commissioner of Internal Revenue, through his Internal Revenue Agents, made an investigation of the income tax liability of the plaintiff for the years 1917 to 1920, inclusive, and that a written report thereof was made on August 17, 1921. All other allegations of said paragraph VII are denied.

VIII

Answering the allegations of paragraph VIII of the First Amended Petition defendant admits that on July 13, 1922, a demand for additional income taxes was made of the *Trumbull* Refining Company by the Collector of Internal Revenue for the Sixth Collection District of the State of California. All other allegations of said paragraph VIII of the First Amended Petition are denied.

IX

The allegations of paragraph IX of the First Amended Petition are denied.

X

The allegations of paragraph X of the First Amended Petition are denied, except that it is admitted that on February 5, 1923, the Commissioner of Internal Revenue advised the Trumble Refining Company that its tax had been redetermined under the provisions of Section 210 of

the Revenue Act of October 3, 1917, which resulted in an overassessment of \$151.17. That subsequently thereto the Commissioner of Internal Revenue issued a certificate of overassessment of the sum above referred to.

XI

The allegations of paragraph XI of the First Amended Petition are denied.

XII

Answering the allegations of paragraph XII of the First Amended Petition, the defendant denies the same, except that it is admitted that the United States Board of Tax Appeals promulgated an opinion in the case of Trumbull Refining Company of Arizona -v- Commissioner of Internal Revenue, which opinion is reported in Volume 14 of Board of Tax Appeals Reports at page 348. In this connection, defendant alleges that all of paragraph XII of said First Amended Petition is immaterial and irrelevant to the issues in this action.

XIV

Answering the allegations of paragraph XIV of the First Amended Petition, the defendant admits the same.

XV

Answering the allegations of paragraph XV of the First Amended Petition defendant alleges that it has not sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof and therefore denies the same.

XVI

Answering the allegations of paragraph XVI of the First Amended Petition the defendant admits that neither the sum of \$18,235.68, together with tax and interest for

the year 1917, or any part thereof, has been repaid to the plaintiff. All the other allegations of said paragraph XVI of the Petition are denied.

BY WAY OF FURTHER ANSWER AND AS AN
AFFIRMATIVE DEFENSE DEFENDANT AL-
LEGES:

I

That at all times herein mentioned the defendant, United States of America was, and still is, a sovereign body politic.

II

That this Court is without jurisdiction over the subject matter of this action for the reason that the tax herein sought to be recovered was imposed under the "special assessment provision" of Section 210 of the Revenue Act of 1917.

WHEREFORE, defendant having fully answered the First Amended Petition prays that plaintiffs take nothing by this action and that defendant be allowed to go ahead with its costs.

Peirson M. Hall—E. H.

PEIRSON M. HALL,

United States Attorney.

E. H. Mitchell—E. H.

E. H. MITCHELL,

Special Assistant, U. S. Attorney.

Eugene Harpole

EUGENE HARPOLE,

Special Attorney,

United States Treasury Department.

[Endorsed]: Filed Apr. 16, 1936. R. S. Zimmerman,
Clerk, By Robert P. Simpson, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

REQUEST BY PLAINTIFFS FOR FINDINGS OF
FACT AND CONCLUSIONS OF LAW.

Come now the plaintiffs above named and hereby request the Court, that in rendering and making its judgment in the above entitled cause, which has been submitted to the Court, said Court make specific Findings of Fact and Conclusions of Law upon the issue included in said cause, as set forth in the proposed Findings of Fact and Conclusions of Law hereto attached.

Dated: January 12, 1938.

Thomas R. Dempsey

Thomas R. Dempsey

A. Calder Mackay

A. Calder Mackay

Attorneys for Plaintiffs.

Approved as to form as provided by Rule 44, except
as to Finding XXVIII

Ben Harrison—E. H.

United States Attorney

E. H. Mitchell—E. H.

Assistant United States Attorney

Eugene Harpole

Special Attorney, Bureau of

Internal Revenue,

Attorneys for Defendant.

FINDINGS OF FACT

I.

That the defendant, the United States of America, was, during all times material to this action, and still is, a sovereign body politic.

II.

That the Trumble Refining Company was incorporated under the laws of the State of Arizona on or about July 13, 1910, and existed as a corporation until on or about March 24, 1930. That the said Trumble Refining Company was duly and regularly qualified to do business in the State of California and its principal place of business was located at Los Angeles, California. That on or about March 24, 1930 said Trumble Refining Company was duly and regularly dissolved and plaintiffs are now duly appointed, qualified and acting trustees in dissolution of said corporation and are empowered and entitled to institute and maintain causes of action for and on behalf of said Trumble Refining Company.

III.

That the Trumble Refining Company within the time allowed by law and on March 29, 1918 and April 20, 1918, filed with the then Collector of Internal Revenue, John P. Carter, its original and amended income and excess profits tax returns, respectively, for the year 1917 wherein it disclosed a gross income of \$97,503.11, deductions of \$8,033.57 and a net taxable income of \$89,469.54, which resulted in a tax liability, computed under Section 209 of the Revenue Act of 1917, of \$11,870.68, which on June 14, 1918 was paid to the said Collector of Internal Revenue.

IV.

In determining its net taxable income as shown on said last mentioned return Trumble Refining Company inadvertently failed and neglected to take as a deduction from its gross income the exhaustion sustained upon its patent license agreements.

V.

That the said Trumble Refining Company from the time of its inception to and including the year 1917 was the owner and in possession of certain patent license agreements which on March 1, 1913 had a fair market value of \$850,000 and a remaining useful life from March 1, 1913 of eleven years, eight months and twenty days, and was therefore entitled, in the determination of its net taxable income, to an annual deduction of \$72,511.90, for the exhaustion of said patent license agreements. That the Trumble Refining Company's net taxable income for the year 1917 was the sum of \$16,957.64.

VI.

That the invested capital of the Trumble Refining Company for the year 1917, as computed under the provisions of Section 207 of the Revenue Act of 1917, is the sum of \$67,760.17.

VII.

That by letter dated February 21, 1920 the Commissioner of Internal Revenue proposed additional taxes against the Trumble Refining Company for the year 1917 in the sum of \$6,365; in said letter of February 21, 1920 the Commissioner advised the Trumble Refining Company that in his opinion its business was of such a character as normally to require a substantial capital investment and the income was attributable to the employment

of capital, and that therefore the tax liability of Trumble Refining Company could not properly be determined under the provisions of Section 209 of the Revenue Act of 1917; in said letter the Commissioner furthermore advised the Trumble Refining Company that in his opinion a large part of the Trumble Refining Company's invested capital could not be included under the statutory requirements for tax purposes and that therefore he had computed the tax under the provisions of Section 210 of the Revenue Act of 1917.

VIII.

That the additional taxes of \$6,365 so computed by the Commissioner were based upon a net income of \$89,469.54—the net income reported by the Trumble Refining Company in its original return which was erroneously computed without allowance for the exhaustion of its patent rights.

IX.

That the additional income and excess profits tax of the Trumble Refining Company for the year 1917 in the sum of \$6,365.00, as computed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917 and proposed in said letter of February 21, 1920 were assessed by the Commissioner of Internal Revenue on May 17, 1920.

X.

That thereafter and on or about June 17, 1920 the Trumble Refining Company filed an amended income tax return for the year 1917 wherein it claimed a deduction for the exhaustion of its patent license agreements or royalty contracts in the sum of \$54,121.42 based upon a March 1, 1913 value of \$811,821.36 and wherein it disclosed an income tax liability of only \$2,120,88.

XI.

That as a part of said last mentioned amended return the Trumble Refining Company on June 17, 1920 filed a claim for abatement of the said assessment made on May 17, 1920 of additional taxes in the sum of \$6,365 for the year 1917.

That as a part of said last mentioned amended return and said claim for abatement the Trumble Refining Company on or about July 2, 1920 filed its claim for refund demanding the return to it on account of the overpayment of taxes by it for the year 1917 of the sum of \$9,749.80.

XII.

That during August, 1921, the Commissioner of Internal Revenue through his Internal Revenue Agent at Los Angeles caused an investigation to be made in the matter of said amended return, said claim for refund and said claim for abatement, and as a result of such investigation additional income and excess profits taxes of \$40,289.98 for the year 1917, and also large sums for the years 1918, 1919 and 1920 were proposed; that thereafter and under date of December 13, 1921 the Commissioner of Internal Revenue advised the Trumble Refining Company that its claim for refund filed on July 2, 1920, and its claim for the abatement of the taxes proposed by the Commissioner in his letter of February 21, 1920 were rejected.

XIII.

That on or about January 13, 1922 a demand for the payment of said additional income and excess profits taxes of \$6,365 covered by the aforementioned claim for abatement and the Commissioner's letter dated February 21, 1920, together with accrued interest of \$1,082.05 aggregating \$7,447.05, was made upon the Trumble Refining

Company by the Collector of Internal Revenue for the Sixth Collection District of California. That on or about January 21, 1922 a second claim for abatement of said additional taxes for the year 1917 in the sum of \$6,365 was filed with the Collector of Internal Revenue for the Sixth Collection District of the State of California.

XIV.

That on or about February 1, 1922 the Trumble Refining Company filed with the Commissioner of Internal Revenue a comprehensive brief and formal protest against the additional income and excess profits taxes proposed and set forth in the Revenue Agent's report, made by Revenue Agent Degele, dated August 17, 1921 for the years 1917 to 1920, inclusive, which brief and protest were prepared by said company's tax consultant, dealing with the subject matter of assessment of Federal taxes against it for the years 1917 to 1920, inclusive; that in and by said brief said company protested against the proposed additional taxes for each of the last mentioned years; that the principal contention discussed in said brief, and the one which said company asserted was applicable to, and affected alike each of the years 1917 to 1920, inclusive, was its contention that it was entitled to an annual deduction of \$54,121.42 from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements; that said brief contained, among other things, a computation of Federal income taxes for the year 1917, and also showed and claimed that the total tax due the United States Government from the Trumble Refining Company for the year 1917 amounted to the sum of \$2,091.59 and that it had paid a Federal tax for that year amounting to \$11,870.68, and that there was a refund due to said company for said year of \$9,679.09.

XV.

That on December 9, 1922 the Trumble Refining Company's income tax consultant, Mr. E. P. Adams, conferred with one of the officials of the Bureau of Internal Revenue, said official being then in charge of the Special Audit Section; that at said conference said company's tax consultant requested a hearing on the subject of said company's taxes for the years 1917 to 1920, inclusive; that said official responded that said Bureau of Internal Revenue was not yet ready to take up the matter of the company's taxes for all of those years but would hold in abeyance the consideration and final determination of the tax liability for 1917 until said company's taxes for the remaining years could also be reviewed and finally determined. That at the request of said official, confirmed in writing by the Commissioner of Internal Revenue in a letter dated January 19, 1923, the Trumble Refining Company on or about February 1, 1923 executed and filed with the Commissioner of Internal Revenue an income and excess profits tax waiver, being an unlimited waiver of the statute of limitations governing the time within which the Commissioner could make additional assessments of taxes against said company for the year 1917.

XVI.

That on February 5, 1923 the Commissioner of Internal Revenue notified the Trumble Refining Company that its taxes for the year 1917 had been redetermined under the provisions of Section 210 of the Revenue Act of October 3, 1917 with the result that there appeared to be an overassessment of \$151.17 which was abated; that said proposed overassessment was based upon a net income of \$88,727.83, which was erroneously computed without

allowances for the exhaustion sustained on patent rights; that thereafter and under date of February 23, 1923 and in response to said notice said Trumble Refining Company wrote to the Commissioner of Internal Revenue calling attention to its said brief aforementioned and also calling attention to the aforementioned conference had by its tax consultant with an official of the Bureau on December 9, 1922, at which conference request had been made for a joint consideration of all the years involved at a hearing to be held in Washington, and in said response said company also requested that under these conditions further action be withheld in the matter of entering an over-assessment for 1917 and also requested the privilege of filing additional data to prove Trumble Refining Company's right to a substantial deduction for the exhaustion of its patent rights.

XVII.

That on or about May 15, 1923 the Trumble Refining Company telegraphed the Commissioner of Internal Revenue that in view of the understanding reached at said conference held December 9, 1922 and because the questions involved for the year 1917 affected all years, he should instruct the local Collector of Internal Revenue to withhold collection of additional taxes assessed for 1917 and that the Commissioner should fix a date for a conference at which all years might be considered; that thereafter and in response to said company's telegram, the Commissioner, on or about May 21, 1923, telegraphed said company that he had no authority to instruct the Collector to accept abatement claim to replace the claim re-

jected, but that a conference might be arranged on the 1917 case if a formal protest were filed and that it was impracticable on later years until information submitted was considered and audit completed.

XVIII.

That acting in conformity with the telegraphic instructions, the income tax consultant of Trumble Refining Company in the early part of May, 1924 held a conference with an official of the Commissioner of Internal Revenue's office and at said conference said company's representative delivered to said official a brief and protest containing additional data to support its right to an annual deduction from its gross income for the exhaustion of its patent license agreements based upon the March 1, 1913 value thereof.

XIX.

That in said brief the Trumble Refining Company protested against the decisions of the Commissioner on which assessment of additional taxes had been made for the year 1917, and were proposed for 1918 and subsequent years; that in said brief additional arguments were presented in support of said company's contention that it was entitled to the previously claimed annual deduction from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements; that at said last mentioned conference said company's representative discussed with said official said company's contentions respecting taxes as to all of said years and that during said conference said official had before him a file containing documents pertaining to said company's taxes for all of said years; that among such documents then in the hands of said official were said income tax

returns, claims for refund and briefs, which briefs were filed on behalf of said company in February, 1922 and May, 1924, respectively, and also the Revenue Agent's report upon which additional assessments had been proposed to be made against said company for the years 1917 to 1920, inclusive.

XX.

That on May 22, 1923 the Trumble Refining Company paid under protest to the then Collector of Internal Revenue Rex B. Goodcell the sum of \$7,860.19 covering said additional taxes for 1917 of \$6,213.83 (\$6,365 minus \$151.17) and accrued interest thereon of \$1,646.36.

XXI.

That on July 14, 1924 the Committee on Appeals and Review of the Commissioner's office considered the subject matter of the assessment of additional taxes against said company and thereafter recommended to the Commissioner that the March 1, 1913 value of said patent license agreements of Trumble Refining Company be fixed at the sum of \$160,000 and that amortization be allowed to said Company on account of exhaustion of said patent license agreements on the basis of such valuation and that thereupon said recommendation was adopted by the Commissioner.

XXII.

That the Committee on Appeals and Review also determined that the taxes of the Trumble Refining Company for the year 1918 should be computed under the provisions of Section 328 of the Revenue Act of 1918 and approved a rate of 41.37 per cent. That the actions of the Committee on Appeals and Review in this respect were approved by the Commissioner of Internal Revenue.

XXIII.

That thereafter appeals were taken by the said Trumble Refining Company to the United States Board of Tax Appeals with respect to said company's taxes for the years 1918 and 1920 to 1923, inclusive, and thereafter and on or about November 19, 1928 the Board of Tax Appeals in the cases of Trumble Refining Company of Arizona, Docket No. 11763 involving the year 1918, Docket No. 17492 involving the years 1920 and 1921, Docket No. 26434 involving the year 1922 and Docket No: 32151 involving the year 1923, rendered its decision (reported in 14 B. T. A. page 348) holding that the Trumble Refining Company on March 1, 1913 was the owner and in possession of patent license agreements which on March 1, 1913 had a fair market value of \$850,000 and a remaining useful life from March 1, 1913 of eleven years, eight months and twenty days, and was therefore entitled in the determination of its net taxable income to an annual deduction of \$72,511.90 for the exhaustion and depreciation of the value of said patent license agreements; that on the 30th day of October, 1929, the United States Board of Tax Appeals entered its final order determining that the Trumble Refining Company was entitled to an annual deduction in the sum of \$72,511.90 for the exhaustion of its license agreements. That neither the Trumble Refining Company nor the plaintiffs took an appeal from the Board's decision and said decision became final.

XXIV.

That on or about April 25, 1929 the Trumble Refining Company filed with the Commissioner of Internal Revenue its revised claim for refund in the sum of \$17,764.08 on account of taxes, plus interest thereon, paid

for the year 1917 as aforesaid, said claim being computed in conformity with the aforementioned decision of the Board of Tax Appeals. That the Commissioner of Internal Revenue in his letter dated May 22, 1930, sent to the Trumble Refining Company, referred to claims for refund of the Trumble Refining Company for the years 1913, 1914, 1915, 1916, 1917, 1919, 1920, 1922 and 1923. In said letter the Commissioner stated that all of the claims for said years were based upon the contention that the Trumble Refining Company was entitled to an annual deduction from income of \$72,511.90 for depreciation of license agreements in view of the decision rendered by the United States Board of Tax Appeals for the years 1918, 1920, 1921, 1922 and 1923, Docket Numbers 11763, 17492, 26434 and 32151, wherein the Trumble Refining Company was allowed a March 1, 1913 value of \$850,000 on certain license agreements for depreciation purposes resulting in an annual deduction of \$72,511.90 based upon an average life of eleven years, eight months and twenty days as at March 1, 1913. In said letter the Commissioner of Internal Revenue advised the Trumble Refining Company that its claims for refund for 1920, 1922 and 1923 had been allowed in accordance with the decision of the United States Board of Tax Appeals; also that said company's claims for refund for the years 1913, 1914, 1915, 1916 and 1919 were barred by the statute of limitations and that since no tax was paid for any of the last mentioned years within four years of the filing of the claim, the statute of limitations had run and no refund could be made. The letter also advised the taxpayer that since the Commissioner had not acquiesced in said decision of said Board of Tax Appeals with respect to the March 1, 1913 valuation of said license agreements for depreciation purposes, said company's conten-

tion could not be allowed for those years which were not pending before said Board, namely, 1913 to 1917, inclusive, and 1919. That the Commissioner's action in refusing to allow Trumble Refining Company a deduction of \$72,511.90 from its gross income for 1917 in accordance with the decision of the Board of Tax Appeals and in refusing to allow the refund due as a result of such allowance was arbitrary.

XXV.

That the Commissioner of Internal Revenue in his letter to the Trumble Refining Company under date of November 3, 1930 for the first time stated or took the position in his negotiations with said Trumble Refining Company to the effect that a reopening of its claim for refund on account of 1917 taxes was prohibited and that the period for bringing suit thereon had expired, and at no time did the Commissioner advise the Trumble Refining Company that its refund for 1917 could not be allowed because its taxes were properly computed under the provisions of Section 210 of the Revenue Act of 1917.

XXVI.

That on July 25, 1930 the Commissioner of Internal Revenue notified the Trumble Refining Company in writing that its revised claim for refund filed on April 25, 1929 for the refund of 1917 taxes had been rejected.

XXVII.

That at all times from and after June 17, 1920 the Trumble Refining Company in its negotiations and dealings with the Commissioner took the position that it was entitled annually to a deduction from its gross income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements, such annual deduc-

tion being claimed to be in excess of the sum of \$54,000; that the Commissioner's rejection on December 13, 1921 of said company's original claim for refund was vacated and set aside, and that said claim was reopened and re-considered and was not rejected until July 25, 1930; that the Commissioner of Internal Revenue from the time the Trumble Refining Company filed its amended income tax return in June, 1920, disclosing that it had overpaid its taxes and was entitled to a refund for the taxes so overpaid, up to and until the date of the rejection of its revised claim considered the data and arguments submitted by the Trumble Refining Company and held in abeyance a final determination of the net taxable income of the Trumble Refining Company for the year 1917.

XXVIII.

That the Trumble Refining Company at no time requested or acquiesced in a determination of its excess profite taxes for the year 1917 in accordance with the provisions of Section 210 of the Revenue Act of October 3, 1917, and at all times material to this action protested the determination of its taxes under said section, and at all times protested the Commissioner's determination that its net taxable income was \$89,469.54 or \$88,727.83 or any sum in excess of \$16,957.64; that the Commissioner was adequately apprised, prior to the making of his special assessment, of the various grounds upon which error was claimed in his computation of net income and tax; that the Commissioner never took the position that his special assessment made under the provisions of Section 210 of the Revenue Act of 1917 concluded the matter, but on the contrary kept the case open and kept on re-examining the factors essential to determine the net taxable income of Trumble Refining Com-

pany for the year 1917; that the Commissioner's determinations to assess Trumble Refining Company under the provisions of Section 210 of the Revenue Act of October 3, 1917 made by him in his letters of February 21, 1920 and February 5, 1923 were vacated and set aside and at no time has the Commissioner of Internal Revenue made a final determination that the Trumble Refining Company's income tax liability should be computed under the provisions of Section 210 of the Revenue Act of October 3, 1917.

XXIX.

That neither said John P. Carter, nor said Rex B. Goodcell were at the commencement of this suit in the employ of the Federal Government in the capacity of Collector of Internal Revenue for the Sixth Collection District, said John P. Carter having resigned on the 5th day of March, 1922 and Rex B. Goodcell having resigned on the 5th day of April, 1926.

XXX.

That no action upon the claims hereinbefore referred to, other than as herein set forth, has been taken before Congress or before any of the departments of the Government of the United States, or in any court other than by the original and the amended petitions filed herein; that plaintiffs are now the sole owners thereof.

XXXI.

That the correct tax liability of the Trumble Refining Company for the year 1917 is the sum of \$3,389.19 and that the Trumble Refining Company overpaid its taxes for the year 1917 by the total sum of \$16,341.68; that there is now due and owing to these plaintiffs for taxes thus overpaid for the year 1917 the total sum of \$16,-

341.68, together with interest at the rate of 6% from the dates paid, \$6,213.83 having been paid on May 22, 1923, together with interest of \$1,646.36 or a total of \$7,860.19, and the balance thereof, to wit, \$8,481.49 having been paid on June 14, 1918.

CONCLUSIONS OF LAW.

The premises considered, the Court concludes as a matter of law as follows:

I.

That subsequent to the original rejection of said company's first claim for refund and first claim for abatement, that is to say, that subsequent to December 13, 1921 and prior to February 1923, and likewise subsequent to February 1923, the Commissioner reopened and kept reopened and continued to give further consideration to said company's claims and contentions respecting taxes paid and also respecting additional taxes proposed to be assessed for the year 1917 that said company's claims and contentions respecting such taxes were still pending before and under consideration by the Commissioner on the date, to wit, April 25, 1929, when said company filed its revised claim for refund, and that said company's claims and contentions respecting such taxes were finally passed upon and determined by the Commissioner when he rejected said revised claim for refund.

II

That the Commissioner's letters of February 21, 1920 and February 5, 1923, advising the Trumble Refining Company that its taxes had been computed under Section 210 of the Revenue Act of 1917 were not regarded by the Commissioner as final determinations of its tax liability, the essential factor, to wit, the net income of the Trumble Refining Company not then having been finally determined,

but on the contrary the Commissioner kept the case open and kept re-examining the situation; that the Commissioner's act on or about July 14, 1924 of determining that the Trumble Refining Company's patent license agreements had a March 1, 1913 value of \$160,000, vacated and set aside whatever determination he had made that the Trumble Refining Company's tax liability should be determined under the provisions of Section 210 of the Revenue Act of October 3, 1917.

III

That the claim herein sued upon was filed within the time allowed by law.

IV

That this Court has jurisdiction to hear and determine this proceeding.

V

That the plaintiffs are entitled to have refunded to them and to recover from the defendant:

(a) The sum of \$8,481.49, together with interest thereon at the rate of six per cent (6%) per annum from June 14, 1918; and

(b) The sum of \$7,860.19, together with interest thereon at the rate of six per cent (6%) per annum from May 22, 1923.

Let judgment be entered accordingly and let proper exceptions by the defendant to the aforesaid findings and conclusions be noted.

Dated this 31 day of May, 1938.

H. A. Hollzer
Judge.

[Endorsed]: Filed Jan. 18, 1938 R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

A. J. GUTZLER, F. M. McDON-)	
NELL, L. T. BARNESON, J. LES-)	
LIE BARNESON and FRANK L. A.)	
GRAHAM, Trustees for Trumble Re-	)	AT LAW
ving Company, a dissolved corporation,	)	No. 5767-H
Plaintiffs,)	
vs.	)	JUDGMENT
UNITED STATES OF AMERICA,)	
Defendant.)	

This cause having come on regularly for trial on the 2nd day of February, 1937, before the Court sitting without a jury, a jury having been expressly waived in writing by the parties; A. Calder Mackay, Esq., appearing as attorney for plaintiffs, and Peirson M. Hall, United States Attorney, and Eugene Harpole, Special Attorney for the Bureau of Internal Revenue, appearing as attorneys for the defendant; and evidence, both oral and documentary, having been introduced by the respective parties and received, and the cause having been submitted to the Court for decision, and the Court having made and filed its findings of fact and conclusions of law and ordered that judgment be entered in favor of the plaintiffs in accordance therewith, and the defendant having excepted to said findings of fact and conclusions of law:

NOW, THEREFORE, it is the judgment of the Court that plaintiffs do have and recover from defendant (a) the sum of Eight Thousand Four Hundred Eighty-one Dollars and Forty-nine Cents (\$8,481.49) together with

interest thereon at the rate of six per cent (6%) per annum from June 14, 1918, said interest amounting to Ten Thousand One Hundred Fifty-two & 70/100 (\$10,152.70), and (b) the sum of Seven Thousand Eight Hundred Sixty Dollars and Nineteen Cents (\$7,860.19) together with interest thereon at the rate of six per cent (6%) per annum from May 22, 1923, said interest amounting to Seven Thousand and Eighty and 63/100 (\$7080.63), amounting in the aggregate to the sum of Thirty Three Thousand Five Hundred Seventy-five & 01/100 (\$33,575.01), which shall bear interest according to law.

Dated this 31 day of May, 1938.

H. A. Hollzer

District Judge.

Approved as to form as provided by Rule 44.

Ben Harrison—E. H.

Ben Harrison

E. H. Mitchell—E. H.

E. H. Mitchell

Eugene Harpole

Eugene Harpole

Attorneys for Defendant.

Judgment entered and recorded May 31, 1938

R. S. ZIMMERMAN,

Clerk.

By L. Wayne Thomas,

Deputy Clerk.

[Endorsed]: Filed May 31, 1938. R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

BILL OF EXCEPTIONS

Be it remembered that heretofore, to-wit: on the 2nd and 3rd days of February, 1937, the above entitled cause came on regularly for trial at Los Angeles, California, upon the issues joined herein before the Honorable Harry A. Hollzer, sitting as Judge of the above entitled Court without a jury, a jury having been duly waived by the parties through their counsel.

Thereupon the plaintiffs introduced the following written Stipulation of Facts in evidence as the plaintiffs' Exhibit 1:

PLAINTIFFS' EXHIBIT 1

“(Title of Court and Cause)

“STIPULATION

“It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the following facts are true.

I

“That the defendant, the United States of America, was, during all times material to this action, and still is, a sovereign body politic.

II

“That the Trumble Refining Company was incorporated under the laws of the State of Arizona on or about July 13, 1910 and existed as a corporation until or or about March 24, 1930. That the said Trumble Refining Company was duly and regularly qualified to do business in the State of California and its principal place of business was located at Los Angeles, California. That on or

about March 24, 1930 said Trumble Refining Company was duly and regularly dissolved and plaintiffs are now duly appointed, qualified and acting trustees in dissolution of said corporation and are empowered and entitled to institute and maintain causes of action for and on behalf of said Trumble Refining Company.

III

“That attached hereto, Marked Exhibits ‘A’ and ‘B’ and made a part hereof, are the original income and excess profits tax returns filed by the Trumble Refining Company for the year 1917, on or about March 29, 1918 and April 20, 1918, respectively. That the income and excess profits tax of \$11,870.88 disclosed upon said returns for the year 1917, was paid on the 14th day of June, 1918.

IV

“That on February 21, 1920 the Commissioner of Internal Revenue mailed a letter to Trumble Refining Company, copy of which is attached hereto, marked Exhibit ‘C’ and made a part hereof. That the additional tax of \$6,365.00 proposed for the year 1917 in said letter was assessed by the Commissioner of Internal Revenue on May 17, 1920.

V

“That soon thereafter a claim for the abatement of said additional taxes, a copy of which is attached hereto, marked Exhibit ‘D’ and made a part hereof, was filed by said Trumble Refining Company, which abatement claim was filed on June 17, 1920.

VI

“That on or about June 17, 1920 the Trumble Refining Company filed an amended income tax return for the

year 1917, a true copy thereof being attached hereto, marked Exhibit 'E' and made a part hereof, disclosing a tax of \$2,120.88 to be due for the year 1917.

VII

"That on July 2, 1920 the Trumble Refining Company filed a claim for refund, a copy of which is attached hereto, marked Exhibit 'F' and made a part hereof, covering \$9,749.80, of the taxes paid by it on June 14, 1918.

VIII

"That by letter dated December 13, 1921, copy of which is attached hereto, marked Exhibit 'G' and made a part hereof, the Commissioner of Internal Revenue advised the Trumble Refining Company that its claim for the refund of taxes for the year 1917 in the sum of \$9,749.80 and its claim for the abatement of the additional assessment of \$6,365.00 for the year 1917 were rejected.

IX

"That on or about January 13, 1922 a demand for the payment of the additional income and excess profits tax of \$6,365.00 covered by the aforementioned claim for abatement and the Commissioner's letter dated February 21, 1920, together with accrued interest of \$1,082.85, aggregating \$7,447.05, was made by the Collector of Internal Revenue for the Sixth Collection District of the State of California.

X

"Subsequent thereto and on or about January 21, 1922 a second claim for abatement was filed with the Collector of Internal Revenue for the Sixth Collection District of the State of California in the sum of \$7,447.05, a copy of which claim is attached hereto, marked Exhibit 'H' and made a part hereof.

XI

“That pursuant to the request made by the Commissioner of Internal Revenue in his letter to the Trumble Refining Company dated January 19, 1923, a copy of which is attached hereto, marked Exhibit ‘I’ and made a part hereof, the Trumble Refining Company executed an income and excess profits tax waiver and filed the same with the Commissioner of Internal Revenue, a copy of said waiver being attached hereto, marked Exhibit ‘J’ and made a part hereof.

XII

“That on or about February 5, 1923 the Commissioner of Internal Revenue in writing advised the Trumble Refining Company that its tax liability had been redetermined under the provisions of Section 210 of the Revenue Act of October 3, 1917, which resulted in an overassessment of \$151.17, a copy of said letter being attached hereto, marked Exhibit ‘K’ and made a part hereof.

XIII

“That attached hereto, marked Exhibit ‘L’ and made a part hereof is a true copy of the Commissioner’s schedule abating said assessment to the extent of \$151.17.

XIV

“That under date of February 23, 1923 the Trumble Refining Company made a written request to the Commissioner of Internal Revenue for the privilege of filing additional data and also requesting a hearing to be set in Washington, D. C., a copy of said letter being attached hereto, marked Exhibit ‘M’ and made a part hereof.

XV

“That on or about May 15, 1923 the Trumble Refining Company sent a telegram to the Commissioner of Internal Revenue, a copy of which is attached hereto, marked Exhibit ‘N’ and made a part hereof, requesting that instructions be given the Collector of Internal Revenue to withhold collection pending hearing in Washington, D. C. Under date of May 22, 1923 the Commissioner of Internal Revenue advised the Trumble Refining Company by telegram, a copy of which is attached hereto, marked Exhibit ‘O’ and made a part hereof, that he had no authority to instruct the Collector to accept the abatement claim to replace the claim rejected and that a conference may be arranged on 1917 case if formal protest is filed.

XVI

“That thereafter and on May 22, 1923 Trumble Refining Company paid under protest to the Collector of Internal Revenue the sum of \$7,860.19 covering additional taxes of \$6,213.83 (\$6,365.00 minus \$151.17) and accrued interest thereof on \$1,646.36.

XVII

“That on or about November 19, 1928 the United States Board of Tax Appeals in the cases of Trumble Refining Company of Arizona Docket No. 11763 involving the year 1918, Docket No. 17492 involving the years 1920 and 1921, Docket No. 26434 involving the year 1922 and Docket No. 32151 involving the year 1923, rendered a decision, which decision is reported in the

official reports of the Board of Tax Appeals designated as 14 B. T. A. at page 348. That no appeal from the decision of the Board of Tax Appeals was taken by either the Commissioner of Internal Revenue or the Trumble Refining Company.

XVIII

“That attached hereto, marked Exhibit ‘P’ and made a part hereof, is a true copy of a claim for refund filed by Trumble Refining Company with the Collector of Internal Revenue at Los Angeles on or about April 25, 1929 in which the Trumble Refining Company demanded the return to it of the total amount of taxes paid by it on the 14th day of June, 1918 and the 22nd day of May, 1923.

XIX

“Under date of May 22, 1930 the Commissioner of Internal Revenue advised the Trumble Refining Company by letter, a copy of said letter being attached hereto, marked Exhibit ‘Q’ and made a part hereof, that since the Commissioner had not acquiesced in the decision of the United States Board of Tax Appeals for the years 1918, 1920, 1921, 1922 and 1923, Docket Numbers 11763, 17492, 26434 and 32151, (14 B. T. A. 348), the Trumble Refining Company’s contention for depreciation of its license agreements could not be allowed for the year 1917. That on July 25, 1930 the Commissioner wrote a letter to the Trumble Refining Company, a copy of which is attached hereto, marked Exhibit ‘R’ and made a part hereof, advising that its claim for refund for the year 1917 was rejected.

XX

“That neither said John P. Carter, nor said Rex B. Goodcell are at the commencement of this suit in the employ of the Federal Government in the capacity of Collector of Internal Revenue for the Sixth Collection District, said John P. Carter having resigned on the 5th day of March, 1922 and Rex B. Goodcell having resigned on the 5th day of April, 1926.

XXI

“That no action upon the claim hereinbefore referred to, other than as herein set forth, has been taken before Congress or before any of the Departments of the Government of the United States, or in any court other than by the amended petition filed herein; that plaintiffs are now the sole owners thereof.

“Dated: February 2, 1937.

THOMAS R. DEMPSEY

Thomas R. Dempsey

A. CALDER MACKAY

A Calder Mackay

Attorneys for Plaintiffs

PEIRSON M. HALL

Peirson M. Hall,

U. S. Attorney

.....,
Asst. U. S. Attorney

EUGENE HARPOLE,

Eugene Harpole,

Special Attorney, Bureau of
Internal Revenue.”

EXHIBIT A

"REC'D 4-5 48,751,098

Mar. 29, 1918

6th Dist.—California

CORPORATION INCOME TAX RETURN

(for all corporations except railroad and insurance companies)

<u>Caution</u>)	(Do not write in this
Read this form and)	(space
all instructions care-)	(Received
fully and fill in supple-)	(_____
mentary statement on)	(<u>List</u>
back of return first.)	(Month Page Line
Totals in supplemen-)	(_____
tary statement must)	(Mar. 198 13
agree with totals on)	(
face of return)	(Audited by 913

Return of annual net income for the

(Calendar year 1917

(fiscal year ended December 31, 1917

Name of corporation Trumble Refining Company of
ArizonaPrincipal Office Higgins Building, Los Angeles, Cali-
fornia.Kind of business carried on Licensing the use of oil
refining process.

Date of organization July 13, 1910

: IT -SA	:	:	IT -SA	:
: ABATEMENT R	:	:	REFUND R	:
: Claim No. 77826 E	:	:	Claim No. 78180 E	:
:	:	:	J	:
: Claimed: \$6,365.00 E	:	:	Claimed: \$9,749.80 E	:
: Approved: C	:	:	Approved: C	:
: Rejected: \$6,365.00 T	:	:	Rejected: \$9,749.80 T	:
:	:	:	E	:
: GB Oct. 14/21 D	:	:	G.B. Oct. 14/21 D	:

1. Total amount of paid-up capital stock outstanding at the close of the year, or if there is no capital stock the capital other than interest-bearing indebtedness employed in the business at the close of the year. Unissued or treasury stock must not be included in this item, but only stock actually issued and outstanding at the close of the year for which this return is made.

(a) Paid-up 'common stock' . . . \$274,000.00

(b) Paid-up 'preferred stock' . . . 545,800.00

Total paid-up stock . . . \$819,800.00

or (c) Capital employed in business . \$_____

2. Total amount of bonded or other interest-bearing indebtedness outstanding at the close of the year, exclusive of indebtedness wholly secured by collateral the subject of sale or hypothecation in the ordinary business of the company and exclusive also of in-

debtedness incurred in the purchase of securities, the income from which is not subject to income tax.

Character of obligation	Rate of interest	Principal
.....		
.....		None
.....		
Total indebtedness		

INCOME

3. (a) Gross sales and other income from operations	\$ None
(b) Income from rentals, royalties, etc.	96,499.59
(c) Income from interest (see item 3c on back of return)	1,003.52
(d) Income from dividends (see item 3d on back of return)	None
(e) Income from all other sources (see item 3e on back)	None
Total gross sales and other income	<u>\$97,503.11</u>

DEDUCTIONS

(See corresponding items on back of return)

4. (a) Cost of goods and other property sold	\$ None
(b) Expenses, general	4,944.27
5. (a) Losses sustained charged off	None

	(b) Depreciation charged off	1,407.45	
	(c) Depletion charged off	None	
6.	(a) Interest paid (except as entered under 6b and c)	None	
	(b) Interest paid on de- posits (for banks only)	None	
	(c) Interest paid on in- debtedness wholly se- cured by collateral .	None	
7.	(a) Domestic taxes paid, not including income and excess profits taxes	1,681.85	
	(b) Foreign taxes paid .	None	
		<hr/>	
	Total deductions . . .	\$8,033.57	
	Less total deductions		8,033.57
			<hr/>
8.	Total net income		\$89,469.54
8.	Total net income forwarded . . .		\$89,469.54
	Less (a) Excess prof- its tax (item) 12	\$6,917.56	
	(b) Dividends re- ceived out of earnings of 1913, 1914, 1915	None	
		<hr/>	
	Total (a plus b)		6,917.56

9.	(a) Amount taxable at 2% (item 8 less total of a plus b)	\$82,551.98
	(b) Amount taxable at 1% (item 8b)	None
<hr/>		
10.	Amount of total net income shown in item 8	\$89,469.54
	Less: (a) Excess profits tax (item 12) \$6,917.56	
	(b) Dividends received (item 3d)	None
<hr/>		
	Total (a plus b)	6,917.56
<hr/>		
11.	Amount taxable at 4% (item 10 less total of a plus b)	\$82,551.98
	If return is made for a full fiscal year ended in 1917, compute tax on as many twelfths of item 11 as there are months from January 1, 1917, to the close of the fiscal year. Enter amount taxable here.	
12.	Amount of excess profits tax (see instructions below)	\$ 6,917.56
13.	Amount of 2% tax (2% of item 9a)	1,651.04
14.	Amount of 1% tax (1% of item 9b)	None
15.	Amount of 4% tax (4% of item 11)	3,302.08
<hr/>		
16.	Total tax assessable	\$11,870.68
<hr/> <hr/>		

We, the undersigned, president and treasurer of the above-named company, whose return of net income is herein set forth, being severally duly sworn, each for him-

self, deposes and says that the items entered in the foregoing report and in the supplementary statement and in any additional list or lists attached to or accompanying this return, are, to his best knowledge and belief, true and correct in each and every particular.

Sworn to and sub-)

scribed before me) this 28th day of March, 1918.

LOUIS W. GRATZ
Notary Public,

F. M. TOWNSEND,
President.

(Seal of In and for the County
officer of Los Angeles, State
taking of California.
affidavit)

A. J. GUTZLER,
Secretary.

(SEAL)

A U D I T E D		A S S E S S M E N T	
: Tax liability	:	: Add Income	:
: Increased \$.....	:	: Tax \$6,365.00	:
: Penalty \$.....	:	: Penalty \$.....	:
: Tax liability	:	: \$6,365.00	:
: Reduced \$.....	:	: C R E D I T S	:
:	:	: Overpay-	:
: Claim re-	:	: ments \$.....	:
: jected for \$.....	:	: \$.....	:
: Claim Con-	:	: \$.....	:
: trol No.	:	: Balance tax	:
: Basis of Audit	:	: due \$6,365.00	:
: Unit No. 2	:	: Basis: Office	:
: (Balance illegible)	:	: Audit	:
	:	: Feb. 19, 1920	:
	:	: 30 Line 4	:

GENERAL INSTRUCTIONS
(General Instructions omitted as immaterial)

SUPPLEMENTARY STATEMENT

The following information must be furnished, either on this sheet or on attached schedules, by every corporation, joint stock company, or association. Without such information the return will not be accepted as complete. The items below relate to the correspondingly numbered items on the first page.

3. (c) FROM INTEREST.

Interest to be reported as income for the purpose of the income tax includes all interest received on bonds or securities owned by the corporation except interest on obligations of a State or political subdivision thereof or interest upon the obligations of the United States or its possessions.

3. (d) FROM DIVIDENDS RECEIVED.

Any distribution made or ordered to be made by a corporation out of its earnings or profits accrued since March 1, 1913, whether in cash or stock of the paying company, must be returned (under Item 3(d) on front page of this form) by the receiving corporation as income of the year in which the distribution was made or ordered to be made and will be taxed at the rates prescribed by law for the years in which surplus or profits distributed were earned, viz. 1% on amounts received out of earnings of 1913 (subsequent to March 1, 1913), 1914 and 1915, and 2% on amounts received from earnings of 1916 and 1917. A statement from the corporation paying the dividends in-

cluded herein should be attached to this return, showing separately the amount of dividends paid out of earnings of each year; otherwise, they will be deemed to have been paid out of the earnings of 1917 and will be taxed 2%. The receiving corporation, in order that tax may be computed on dividends received in 1917 at the rates applicable to the years in which the profits were earned, must fill in the following form:

Dividends received in 1917 out of profits earned each year subsequent to March 1, 1913.

1913	1914	1915	1916	1917	Total
\$.....	\$.....	\$.....	\$.....	\$.....	\$ None

3. (e) FROM OTHER SOURCES.

Income received from all sources not elsewhere specified should be itemized below:

.....	\$.....
.....	\$.....
.....	\$.....
Total	\$ None

4. (a) COST OF GOODS AND OTHER PROPERTY SOLD.

Report the cost of goods sold in the following form:

Merchandise bought for sale.....\$.....

Cost of manufacturing or otherwise producing goods (if separately shown on books).

(Submit schedule showing principal items of cost).....\$.....

Plus inventories at beginning of year.....	\$.....
Total	\$ None
Less inventories at end of year.....	\$.....
<i>N</i> Net cost of goods sold.....	\$.....
Explanations .....	.....

If the corporation makes inventories of merchandise or materials, explain the basis on which they are made, whether (a) at cost, or (b) at cost or market value, whichever is lower. If no inventories are made, make no entries referring to inventories, but report the total cost of goods purchased or produced during the year. If the cost of manufacturing or otherwise producing goods is not kept separate from general expenses in the corporation's accounts, include such cost in "Expenses, general" below.

Corporations dealing in real estate, and any corporation that has sold any of its capital assets during the taxable year, should report the cost of the property sold in the following form:

1. Original cost of property.....\$.....
2. Market value March 1, 1913, if acquired
before that date.....\$.....
3. Cost of subsequent improvements, if any..\$.....
4. Depreciation and depletion to date of sale..\$.....
5. Net cost (item 1 or item 2 plus item 3
minus item 4).....

State how market value March 1, 1913, was determined

.....

.....

Does such value include any good will? If so, how much? \$.....

4. (b) EXPENSES, GENERAL.

This item should include only the ordinary and necessary expenses paid within the year in the operation of the business and maintenance of the properties of the corporation, itemized as per schedule below. It must not include any expenditures reported under 4(a), 5, 6 or 7.

Expenditures for incidental repairs which do not add to the value or appreciably prolong the life of property are deductible as expenses, but expenditures for new buildings, permanent improvements or betterments which increase the value of property, or for restoring or replacing property, are not deductible under this or any other item of the return. Such expenditures are properly chargeable to capital account, to be extinguished through annual depreciation charges.

Payments made to officers or employees, who are stockholders, in the guise of salaries or compensation, the amount of which is based upon the stockholdings of such officers or employees, are not deductible as a business expense.

1. Salaries of officers.....	\$ 2,400.00
2. Labor, wages, commissions, etc. (not included in 'cost of manufacturing or otherwise producing goods' under 4(a).....	
3. Rents, royalties, and other payments in lieu of rent.....	810.00
4. Repairs, ordinary and incidental.....	
5. Other expenditures (classify)—Office and misc. expenses.....	1,734.27
	<hr/>
Total expenses.....	\$ 4,944.27

If salaries were increased or extra compensation was paid to officers, state the amount, the reason therefor, and the basis on which computed.....

5. (a) LOSSES.

Losses deductible under this item must be distinguished from depreciation or allowances for exhaustion, wear and tear. The losses, not compensated by insurance or otherwise, must be absolute, complete, actually sustained during the year, and charged off on the books of the corporation.

Kind of property on which loss is claimed	Cost of property	Cause of loss	Amount charged off within year
.....			\$.....
.....			
Total			\$ None

When were the deducted losses ascertained to be such?

.....

How were they so ascertained?.....

The cost of property lost should be determined as indicated in item 4(a).

A bad debt offsetting income accrued since January 1, 1909, will not be allowed as a deduction unless the amount was reported as income for the year in which the debt was created.

State how the debts charged off (if any) were ascertained to be worthless.....

If at any future time a debt charged off as worthless is collected the amount collected must be returned as income for the year in which received.

Unpaid debts are not deductible if made good by recovery of property sold or retention of property pledged.

5. (b) DEPRECIATION.

The amount deductible on account of depreciation is an amount charged off which fairly measures the loss during the year in the value of physical property by reason of exhaustion, wear, and tear. Such amount should be determined upon the basis of the cost of the property and the probable number of years constituting its life. Stocks, bonds and like securities, as well as any other intangible assets, are not subject to exhaustion, wear and tear within the meaning of the law. Hence any amount charged off as representing a shrinkage in the value of such assets is not deductible either as depreciation or as a loss.

Depreciation computed on total invoice value of merchandise in stock is not an allowable deduction by reason of damage or obsolescence the merchandise is unsalable.

If a deduction is made on account of depreciation, the following statement must be filed in:

Kind of property	Its cost	Probable life after acquirement	Amount of depreciation charged off	
			This year	Previous years
Apparatus	\$21,689.12	8 yrs.	\$1,203.96	\$10,123.81
Office furniture & equipment	1,632.59		203.49	624.70
Totals	\$23,321.71		\$1,407.45	\$

If building, state under 'Kind of property' the material of which constructed.

5. (c) DEPLETION.

Depletion applies to the exhaustion of natural deposits, and contemplates a deduction to return to the corporation the capital invested, or in case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market price or value of such deposits as of that date. An allowable deduction on account of depletion must not exceed the fair market value as of March 1, 1913, or the cost subsequent to that date, of the product mined and sold during the year, and will be determined in accordance with the rule set out in Articles 170 to 173, Regulations 33, Revised. The amount sought to be deducted on this account must be charged off on the books of the company.

*Kind of property	Its cost if acquired subsequent to March 1, 1913	#Fair market value as of March 1, 1913	Amount of depletion charged off	
			This year	Previous year
	\$.....	\$.....	\$.....	\$.....

NONE

*Coal, iron ore, copper, oil or gas.

#State how fair market value as of March 1, 1913 was determined.....

6. INTEREST PAID.

(a) The amount of interest deductible under (a) is the amount actually paid within the year on an amount of bonded or other indebtedness (except on indebtedness falling under 6(b) or 6(c) and indebtedness incurred for the

purchase of obligations or securities the income from which is exempt from income tax) not in excess of the paid-up capital stock outstanding at the close of the year, or if there is no capital stock, the entire amount of capital (not including interest-bearing indebtedness) employed in the business at the close of the year, plus, in each case, one-half of the interest-bearing indebtedness also then outstanding.

Capital employed in the business, as here used, contemplates the entire capital paid in by the members of the company, including so much of the accumulated surplus as is actually employed in the business, but does not include any borrowed capital or interest-bearing indebtedness.

(b) Interest paid (by banks) on deposits or on money received for investment and secured by interest-bearing certificates of indebtedness issued by a bank, banking association, or loan or trust company is deductible in the entire amount so paid.

(c) If the corporation's indebtedness, or any part thereof, is wholly secured by collateral which is the subject of sale or hypothecation in the corporation's ordinary business as a dealer in such property, the interest paid on an amount of such indebtedness not exceeding the actual value of the collateral may be deducted.

Describe all obligations on which interest is paid in the following form. Distinguish plainly collateral loans falling under 6(c) and also obligations incurred for the purchase of securities, the income from which is exempt from income tax.

Kind of Obligation	Amount of Principal	Rate of Interest	Amount of interest paid
.....	\$.		\$.....
.....			
Total	\$.....		\$.....

7. (a) TAXES PAID.

Taxes, paid or accrued on the books of the corporation during the taxable year, are deductible with the following exceptions: Federal income and excess profits taxes (including taxes paid on the interest on its own obligations in pursuance of a covenant contained therein relieving the holder of liability for such taxes), foreign taxes on income derived from sources within the United States by foreign corporations, local taxes specially assessed against property on account of benefits derived from public improvements or betterments, and taxes upon the corporation's capital stock in the hands of the stockholders.

BASIS OF RETURN.

Is this return made on the basis of actual receipts and disbursements?

If not, describe fully what other basis or method was used in computing net income.....

UNDISTRIBUTED INCOME, SURPLUS AND UNDIVIDED PROFITS.

Total net income of taxable year preceding that for which this return is made (less income tax paid thereon) \$82,702.83

Amount of such income remaining undistributed six months after the close of that year None

Amount of such income remaining undistributed twelve months after the close of that year	None
Total surplus and undivided profits at close of taxable year	\$23,243.75

If sufficient space is not provided for the entry of any information required in the 'Supplementary Statement', schedules in the form indicated, marked with the number of the item to be explained, should be attached to this form.

TRUMBLE REFINING COMPANY

Explanatory Statement re Excess Profits Tax

"In making this return, we have classified ourselves as a business having a nominal capital, and have calculated our Excess Profits tax, in accordance with Section 209 of the War Revenue Act of October 3, 1917, at the rate of eight per cent of the net income in excess of \$3,000.00.

"While the attached Balance Sheet discloses Capital Stock outstanding in the amount of \$1,120,000.00, indicating a large capital investment, reference to the assets shows this amount to be practically offset by the two items 'Royalty Contracts' and 'Discount on Capital Stock', which were set up arbitrarily in the year 1915 as an offset to said stock.

"The Royalty Contracts, entered into with various oil companies for the use of a patented process for topping fuel oil, were retained by the Company when in 1915 the patents themselves were sold, and the royalties collected thereunder constitute the Company's only source of income. We are attaching hereto a complete statement of income for the taxable year and the year previous.

“The Balance Sheet and Statement of Income and Profit & Loss were prepared from the report of our auditors, Messrs. Haskins & Sells.

“TRUMBLE REFINING COMPANY OF ARIZONA
BALANCE SHEET, DECEMBER 31, 1917 and DECEMBER 31, 1916

<u>ASSETS</u>	DECEMBER 31,	
	1917	1916
ROYALTY CONTRACTS (Expiring 1928)	\$ 811,821.36	\$ 811,821.36
DISCOUNT ON CAPITAL STOCK . . .	300,200.00	300,200.00
CURRENT ASSETS:		
Cash	32,714.04	35,226.75
Notes Receivable		1,200.00
General Petroleum Corporation — Royalties due	18,549.95	21,664.23
Miscellaneous Accounts Receivable . . .	335.65	767.38
Total Current Assets	51,599.64	58,858.36
OFFICE FURNITURE AND EQUIP- MENT	804.40	1,007.89
PATENTED APPARATUS INSTALLED IN OIL PLANTS (ACTUAL VALUE, \$1,000.00)	10,819.35	11,565.31
TOTAL	\$1,175,244.75	\$1,183,452.92
<u>LIABILITIES</u>		
PREFERRED CAPITAL STOCK	\$ 800,000.00	\$ 800,000.00
COMMON CAPITAL STOCK	320,000.00	320,000.00
ACCOUNTS PAYABLE	1.00	24.65
DIVIDENDS DECLARED	32,000.00	32,000.00
PROFIT & LOSS SURPLUS	23,243.75	31,428.27
TOTAL	\$1,175,244.75	\$1,183,452.92

"TRUMBLE REFINING COMPANY OF ARIZONA

STATEMENT OF INCOME AND PROFIT & LOSS FOR THE YEARS ENDED DECEMBER 31, 1917 and 1916 AND COMPARISON

	YEAR ENDED DECEMBER 31, 1917			YEAR ENDED DECEMBER 31, 1916			INCREASE DECREASE
	Barrels	Royalty per Barrel - ¢	Amount	Barrels	Royalty per Barrel - ¢	Amount	
ROYALTIES:							
Santa Maria Plant	39,828.00	2-1/2	\$ 995.70	66,694.00	2-1/2	\$ 1,667.33	\$ 671.63
Warner-Quinlan Plant	79,191.00	2	1,583.82	198,547.00	2	3,970.94	2,387.12
Warner-Quinlan Plant	34,859.00	1-1/2	522.88	70,723.00	1-1/2	1,060.81	537.93
General Petroleum Vernon Plant	6,003,389.00	1-1/2	90,050.81	5,513,662.00	1-1/2	82,704.92	7,345.89
General Petroleum Nevada Plant	6,327.00	1	63.27	21,339.00	1	213.39	150.12
General Petroleum Olinda Plant	5,640.00	1	56.40	67,365.00	1	673.65	617.25
General Petroleum Sibyl Plant	27,390.00	1	273.90	27,841.00	1	278.41	4.51
North American Plant, Section 16	144,675.07	1/2	723.39	176,508.60	1/2	882.56	159.17
Pan American Plant, Section 22	445,885.09	1/2	2,229.42	604,662.60	1/2	3,023.32	793.90
Total	6,787,184.16		\$ 96,499.59	6,747,342.20		\$ 94,475.33	\$ 2,024.26
GENERAL EXPENSES:							
Salaries			\$ 3,648.00			\$ 4,890.50	\$ 1,242.50
Rent			810.00			1,145.00	335.00
Office and Miscellaneous Expenses			244.87			914.03	669.16
Professional Services			241.40			282.50	41.10
General Taxes			1,681.85			1,348.09	333.76
Income Taxes			1,654.06			2,576.57	922.51
Depreciation on Apparatus and Equipment			1,407.45			1,801.76	394.31
Total General Expenses			\$ 9,687.63			\$ 12,958.45	\$ 3,270.82
NET EARNINGS			\$ 86,811.96			\$ 81,516.88	\$ 5,295.08
OTHER INCOME:							
Interest on Notes Receivable			\$ 63.52			\$ 122.55	\$ 59.03
Interest on Bank Balances			\$ 940.00			1,063.40	123.40
Total Other Income			\$ 1,003.52			\$ 1,185.95	\$ 182.43
PROFIT FOR THE PERIOD			\$ 87,815.48			\$ 82,702.83	\$ 5,112.65
SURPLUS AT BEGINNING OF PERIOD			31,428.27			44,725.44	13,297.17
PROFIT & LOSS SURPLUS BEFORE DEDUCTING DIVIDENDS			\$119,243.75			\$127,428.27	\$ 8,184.52
DIVIDENDS DECLARED			96,000.00			96,000.00	
PROFIT & LOSS SURPLUS AT END OF YEAR			\$ 23,243.75			\$ 31,428.27	\$ 8,184.52"

8

6

]

]

]

]

(

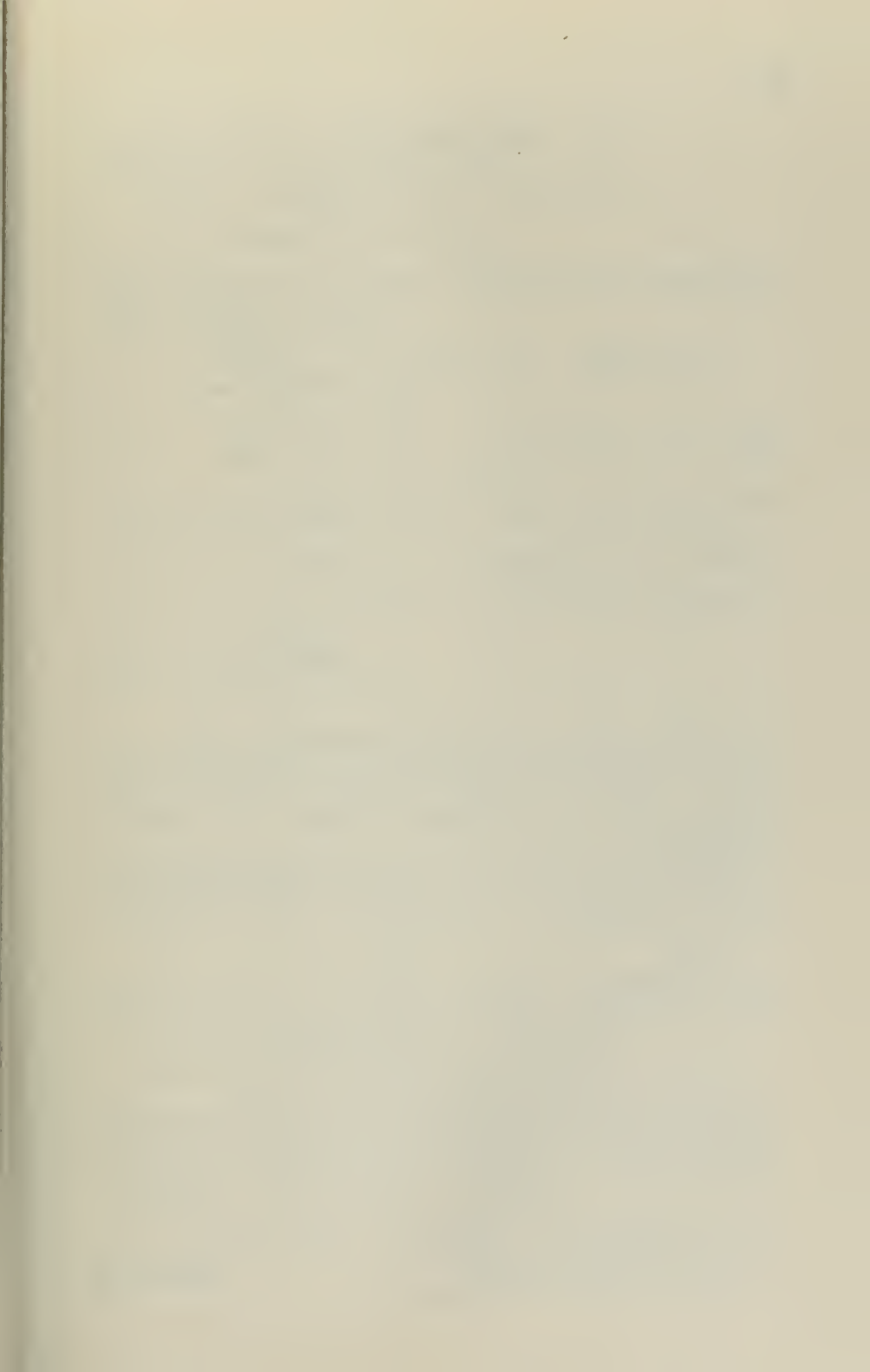


EXHIBIT "B"

"REC'D 4-5 48751098

Apr. 20, 1918

Sixth Dist.—Calif.

CORPORATION EXCESS PROFITS TAX RETURN

	((Do not write in this
CAUTION)	(space)
)	(Received
Read all instruction-	(_____
tions.))	(List.
Answer all questions.)	(_____
If necessary, ask your)	(Month Page Line
Collector of Internal)	(_____
Revenue for Assistance)	(_____
_____)	(_____
	(Audited by _____
	(_____

Taxable year ended December 31, 1917

Name: Trumble Refining Company of Arizona.

Business Address: Higgins Building, Los Angeles, Calif.

Kind of business: Licensing use of oil refining apparatus.

Date established: July 13, 1910

GENERAL INSTRUCTIONS.

General Instructions omitted as immaterial

SCHEDULE I.—Net Income for Taxable Year Subject to Excess Profits Tax.

1. Net income for taxable year shown in	
Item 8, Form 1031	\$89,469.54

2.	Plus Interest on obligations of the United States issued since September 24, 1917, held by corporation in excess of \$5,000.00 par value	-----
<hr/>		
3.	Total	-----
4.	Less: (a) Dividends received as shown in Item 3d, Form 1031	-----
5.	(b) Interest paid (not in excess of legal limits) on indebtedness incurred for purchase of obligations reported in item 2, above	-----
6.	Net income subject to excess profits tax	\$89,469.54

SCHEDULE II. Invested Capital.

Item	1911	1912	1913	Taxable year
1.	Capital, surplus, and undivided profits at the close of the preceding year as shown by corporation's books before making any adjustments therein (from Schedule A)			This return is made on the basis of a business having a nominal capital, and the tax figured at the rate of 8% of the net income in excess of \$3,000.00, in ac-
2.	Adjustments by way of additions (from Schedule B)			
3.	Total			

(continued)

SCHEDULE II. (Continued)

Item	1911	1912	1913	Taxable year
4. Adjustments by way of deductions (from Schedule C)				cordance with Section 209 of the War Revenue Act of October 3, 1917—See explanatory statement attached.
5. Invested capital at beginning of year (Item 3 less Item 4)				
6. Changes in invested capital during year (from Schedules D and E)				
7. Invested capital for year				
8. Total invested capital for prewar period				

SCHEDULE III. Deduction.

1. Percentage—net income to invested capital for prewar period. (Item 6, Schedule F, divided by Item 8, Schedule II. Carry out result as far as desired, but drop the remainder, if any, without increasing the last figure of the percentage%
2. Percentage to be used in computing deduction (see Instruction 5)%
3. Amount of deduction computed at above rate on invested capital for taxable year	\$.....
4. Exemption (except for foreign corporations	3,000.00
Total deduction	\$3,000.00

SCHEDULE IV. Computation of Tax

Classes of Income for Computation of Tax		Amount of in- come in each class	Deduction (if in ex- cess of 15 per cent of invested capital, enter only 15 per cent on first line and balance on line or lines be- low.	Balance subject to tax	Rate	Amount of tax
Over	But not over					
1	2	3	4	5	6	7
\$0.00	15% of in- vested capital	\$89,469.54	\$3,000.00	\$86,469.54	8%	\$6,917.56
15% of in- vested capital	20% of invested capital				25%	
20% of in- vested capital	25% of invested capital				35%	
25% of in- vested capital	33% of invested capital				45%	
33% of in- vested capital					60%	
Total.....		\$.....	\$.....	\$.....	xx	\$.....

SCHEDULE A.—Capital, Surplus, and Undivided Profits as Shown by Books Before Making any Adjustments Therein.

A4. Stock actually outstanding (not in the corporation treasury) at the end of the preceding taxable year may be counted as invested capital to the extent that it is paid up.

A6. Reserves consisting of amounts not deductible in the computation of net income under the income tax law, may, if properly explained, be included as part of the surplus for the purpose of computing the invested capital.

Item	1911	1912	1913	Taxable year
Capital stock paid up and actually outstanding at the close of the preceding year (not including treasury stock) :				
1. First preferred	\$.....	\$.....	\$.....	\$545,800.00
2. Second preferred
3. Common	274,000.00
4. Total	\$.....	\$.....	\$.....	\$819,800.00
Surplus and undivided profits :				
5. Paid-in surplus	\$.....	\$.....	\$.....	\$.....
6. Earned surplus	31,428.27
7. Undivided profits
8. Grand total of items 4, 5, 6 and 7	\$.....	\$.....	\$.....	\$851,228.27

SCHEDULE B.—Adjustments by Way of Additions.

B1. If any part of the interest on the corporation's permanent indebtedness was excluded as a deduction from the corporation's income for any year (see Form 1031), a proportionate part of such indebtedness may be added to invested capital for that year as Item 1, Schedule B.

B2. If any addition to invested capital is reported in Item 2, Schedule B, submit a full statement showing the kind of property, the date when paid in, its value on that date, and how the value was determined.

B3. If an addition to invested capital is reported in Item 3, Schedule B, submit a statement showing the kind of property, its cost, and the year in which it was acquired.

B4. If any addition to invested capital is reported in Item 4, Schedule B, state specifically the amount of de-

preciation or depletion written off each year in the books of the company and the amount allowed as a deduction in computing taxable income.

Item	1911	1912	1913	Taxable year
1. Proportion of permanent indebtedness, the interest on which is not deductible from income in computing income tax (Article 44)	\$.....	\$.....	\$.....	\$.....
2. Value of tangible property in excess of par value of stock issued therefor (Article 63)
3. Additions to capital account allowable under Article 64
4. Depreciation charged in accounts of corporation but disallowed by Treasury Department as expense on income tax returns
5.
6.
7. Total	\$.....	\$.....	\$.....	\$.....

SCHEDULES C, D, E AND F omitted as immaterial.

“QUESTIONS

1. Explain the nature of the corporation’s business if not adequately described on first page:
 - (a) Main business
 -
 - (b) Collateral business, if any
 -
 -
2. Date of incorporation
3. Under the laws of what State or country?.....

4. Enter on the following lines the names and addresses of three representative concerns in your locality engaged in the same kind of business.....

5. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any)? Specify the year
6. If any patent is included among your assets, attach a schedule to this return showing for each patent its serial number, date of issue, name of patentee, amount of cash or stock paid therefor, and its present book value
7. If the corporation ever took over a going business or otherwise acquired a mixed aggregate of tangible property, patents, and copyrights, and good will and other similar intangible property, and paid for such property in whole or in part with stock or other securities, submit a statement showing—
- (a) The name of the concern taken over (or from which the property was acquired).
 - (b) The nature of the assets and liabilities so acquired.
 - (c) The total par value of the stock issued therefor.
 - (d) The value at which each class of assets was carried on the books of the concern from which acquired. (If obtainable submit a balance sheet of the predecessor corporation as at the date of acquisition.)

(e) The value at which each item was entered on the books of the corporation making this return. The different classes of property must be valued as prescribed by article 59 of the Excess Profits Tax Regulations and the values so obtained must be used in making adjustments 1, 2 and 3, Schedule C.

If patents or copyrights were acquired, state the basis on which their value was determined, and how they were paid for.

If good will or other intangible assets were acquired, state the basis on which their value was determined, and how they were paid for.

8. Is the corporation affiliated with one or more other corporations within the meaning of Article 77 of the Excess Profits Tax Regulations?.....

If so, submit a statement describing all of its inter-corporate relationships.

.....

9. Is this return a consolidated return within the meaning of Article 78 of the Excess Profits Tax Regulations? If so, submit a schedule showing in detail the computation of the consolidated invested capital and income.

10. If the corporation was not in existence during the whole of any one of the calendar years 1911-1913, is its business substantially a continuation of a business carried on during any one or more of those years? If so, give name under which, and address at which, its business was then carried on

.....

11. Submit a copy, in detail, of—

- (a) The balance sheet of the corporation at the beginning of the taxable year.
- (b) The balance sheet of the corporation at the close of the taxable year.

We, the undersigned, president and treasurer of the above-named company, being severally duly sworn, each for himself deposes and says that the foregoing return, including the accompanying schedules and statements (if any), has been examined by him and is to the best of his knowledge and belief a true and complete return made in good faith pursuant to the Excess Profits Tax Regulations.

Sworn to and)
 subscribed)
 before me) this 19th day of April, 1918.

F. M. TOWNSEND,
 President

A. J. GUTZLER,
~~Treasurer~~
 Secretary

Seal of : LOUIS W. GRATZ
 officer : Notary Public
 taking : in and for the County of
 affidavit : Los Angeles, State of
 California.

(SEAL)

“REC'D - 4 -

Apr. 20, 1918
6th Dist.—California.

TRUMBLE REFINING COMPANY

EXPLANATORY STATEMENT RE EXCESS
PROFITS TAX

“In making this return, we have classified ourselves as a business having a nominal capital, and have calculated our Excess Profits tax, in accordance with Section 209 of the War Revenue Act of October 3, 1917, at the rate of eight per cent of the net income in excess of \$3,000.00.

“While the attached Balance Sheet discloses Capital Stock outstanding in the amount of \$1,120,000.00, indicating a large capital investment, reference to the assets shows this amount to be practically offset by the two items ‘Royalty Contracts’ and ‘Discount on Capital Stock’, which were set up arbitrarily in the year 1915 as an offset to said stock.

“The Royalty Contracts, entered into with various oil companies for the use of a patented process for topping fuel oil, were retained by the Company when in 1915 the patents themselves were sold, and the royalties collected thereunder constitute the Company’s only source of income. We are attaching hereto a complete statement of income for the taxable year and the year previous.

“The Balance Sheet and Statement of Income and Profit & Loss were prepared from the report of our auditors, Messrs. Haskins & Sells.

"TRUMBLE REFINING COMPANY OF ARIZONA

BALANCE SHEET, DECEMBER 31, 1917 AND DECEMBER 31, 1916

	DECEMBER 31	
	1917	1916
<u>ASSETS</u>		
ROYALTY CONTRACTS (Expiring 1928)	\$ 811,821.36	\$ 811,821.36
DISCOUNT ON CAPITAL STOCK . . .	\$ 300,200.00	\$ 300,200.00
CURRENT ASSETS:		
Cash	32,714.04	35,226.75
Notes Receivable		1,200.00
General Petroleum Corporation—Royalties due	18,549.95	21,664.23
Miscellaneous Accounts Receivable.	335.65	767.38
Total Current Assets	\$ 51,599.64	\$ 58,858.36
OFFICE FURNITURE & EQUIPMENT .	\$ 804.40	\$ 1,007.89
PATENTED APPARATUS INSTALLED IN OIL PLANTS (ACTUAL VALUE, \$1,000.00)	\$ 10,819.35	\$ 11,565.31
TOTAL	\$1,175,244.75	\$1,183,452.92
<u>LIABILITIES</u>		
PREFERRED CAPITAL STOCK	\$ 800,000.00	\$ 800,000.00
COMMON CAPITAL STOCK	320,000.00	320,000.00
ACCOUNTS PAYABLE	1.00	24.65
DIVIDENDS DECLARED	32,000.00	32,000.00
PROFIT & LOSS SURPLUS	23,243.75	31,428.27
TOTAL	\$1,175,244.75	\$1,183,452.92

"TRUMBLE REFINING COMPANY OF ARIZONA

STATEMENT OF INCOME AND PROFIT & LOSS FOR THE YEARS ENDED DECEMBER 31, 1917 and 1916
AND COMPARISON

	<u>YEAR ENDED DECEMBER</u> 31, 1917			<u>YEAR ENDED DECEMBER</u> 31, 1916			INCREASE DECREASE
	Barrels	Royalty per Barrel - ¢	Amount	Barrels	Royalty per Barrel - ¢	Amount	
ROYALTIES:							
Santa Maria Plant.....	39,828.00	2-½	\$ 995.70	66,694.00	2-½	\$ 1,667.33	\$ 671.63
Warner-Quinlan Plant	79,191.00	2	1,583.82	198,547.00	2	3,970.94	2,387.12
Warner-Quinlan Plant	34,859.00	1-½	522.88	70,723.00	1-½	1,060.81	537.93
General Petroleum Vernon Plant.....	6,003,389.00	1-½	90,050.81	5,513,662.00	1-½	82,704.92	7,345.89
General Petroleum Nevada Plant....	6,327.00	1	63.27	21,339.00	1	213.39	150.12
General Petroleum Olinda Plant.....	5,640.00	1	56.40	67,365.00	1	673.65	617.25
General Petroleum Sibyl Plant.....	27,390.00	1	273.90	27,841.00	1	278.41	4.51
North American Plant, Section 16....	144,675.07	½	723.39	176,508.60	½	882.56	159.17
Pan American Plant, Section 22.....	445,885.09	½	2,229.42	604,662.60	½	3,023.56	794.14
Total	6,787,184.16		\$96,499.59	6,747,342.20		\$94,475.33	\$ 2,024.26
GENERAL EXPENSES:							
Salaries			\$ 3,648.00			\$ 4,890.50	\$ 1,242.50
Rent			810.00			1,145.00	335.00
Office and Miscellaneous Expenses.....			244.87			914.03	669.16
Professional Services			241.40			282.50	41.10
General Taxes			1,681.85			1,348.09	333.76
Income Taxes			1,654.06			2,576.57	922.51
Depreciation on Apparatus and Equipment.....			1,407.45			1,801.76	394.31
Total General Expenses.....			\$ 9,687.63			\$ 12,958.45	\$ 3,270.82
NET EARNINGS			\$ 86,811.96			\$ 81,516.88	\$ 5,295.08
OTHER INCOME:							
Interest on Notes Receivable.....			\$ 63.52			\$ 122.55	\$ 59.03
Interest on Bank Balances.....			940.00			1,063.40	123.40
Total Other Income.....			\$ 1,003.52			\$ 1,185.95	\$ 182.43
PROFIT FOR THE PERIOD.....			\$ 87,815.48			\$ 82,702.83	\$ 5,112.65
SURPLUS AT BEGINNING OF PERIOD.....			31,428.27			44,725.44	13,297.17
PROFIT & LOSS SURPLUS BEFORE DEDUCTING							
DIVIDENDS			\$119,243.75			\$127,428.27	\$ 8,184.52
DIVIDENDS DECLARED			96,000.00			96,000.00	
PROFIT & LOSS SURPLUS AT END OF YEAR.....			\$ 23,243.75			\$ 31,428.27	\$ 8,184.52"

EXHIBIT "C"

"A-2 letter.

TREASURY DEPARTMENT,
Washington, D. C.Office of the
Commissioner of
Internal Revenue.
IT:T:SM
EMA-48751098

February 21, 1920.

"Trumble Refining Company,
Higgins Building,
Los Angeles, California.

Sirs:

"Reference is made to your income and excess profits tax returns for the year ended December 31, 1917, which were originally filed and the tax computed as prescribed in Section 209 of the Act of October 3, 1917. You are advised that after careful consideration of the facts as set forth in your statements filed with the returns, together with other data submitted, it is the opinion of this Bureau that your business is of such a character as normally to require a substantial capital investment and the income is attributable to the employment of capital. Therefore, the assessment under the provisions of Section 209 of the Act of October 3, 1917, has been disallowed.

"However, it has been found that, owing to the fact that a large part of the invested capital cannot be in-

cluded under the statutory requirements for tax purposes, your case has been given consideration under the provisions of Section 210 of the same Act and Articles 18, 24 and 52 of Regulations 41, which provide that an excess profits tax may be based on a comparison with a group of concerns engaged in a like or similar line of business which in their general character are comparable as to the several component parts influencing the tax liability to your company.

“The tax thus determined after giving effect to necessary changes in net income developed through audit of the returns, indicates a constructive capital of \$410,253.01 with an allowance deduction of seven per cent plus \$3,000.00 and a net income of \$89,469.54, specific details of which are as follows:

“Invested capital (constructive)	\$410,253.01
Deduction—7% plus \$3,000.00	31,717.71
Net income as reported	89,469.54

Computation of Tax

Excess profits tax	\$ 13,688.84
Net income	\$89,469.54
Less: Excess profits tax	13,688.84

Amount on which income tax at
2% and 4% is calculated \$75,780.70

2% tax	\$ 1,515.61
4% tax	3,031.23

Total tax assessable	\$ 18,235.68
Original assessment	11,870.68

Indicating additional tax	\$ 6,365.00
---------------------------	-------------

“Your attention is directed to the fact that Section 210 of the Act of October 3, 1917, makes no provision for computing the invested capital and its construction under Article 18 of Regulations 41 is only an incident in the assessment of the tax. The capital stated should not be used either as a basis in making any changes in the books of the corporation or making any future returns.

“You will be advised by the Internal Revenue Collector for your district as to the time and manner of payment of the above additional tax.

Respectfully,

(signed) G. V. NEWTON,
Acting Assistant to the Commissioner.”

EXHIBIT "D"

"CLAIM FOR ABATEMENT

Taxes Erroneously or Illegally Assessed

State of.....)
) ss
 County of

IMPORTANT

: This claim should be :	: Date of filing to be :
: forwarded to the Collec- :	: :
: tor of Internal Revenue :	: :
: from whom notice of :	: RECEIVED :
: assessment was re- :	: JUN. 18, 1920 :
: ceived. :	: U. S. INT. REV. :
_____ :	: 6th CAL. :
	: _____ :
(HOLD FOR CLAIM) :	: plainly stamped here :
(FOR REFUND) :	_____ :

_____ TRUMBLE REFINING COMPANY
 Write name : OF ARIZONA
 so it can be : _____
 easily read : (Name of claimant)
 HIGGINS BUILDING—Los Angeles,
 California.

(Address of claimant; give street and number as well as city or town, and State.)

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to said claim are true and complete:

1. Business engaged in by claimant: Leasing use of refinery process.
2. Character of assessment or tax: Income and Profits Taxes, 1917.
3. Amount of assessment: \$6,365.00
4. Amount now asked to be abated . . . \$6,365.00

Deponent verily believes that the amount stated in item 4 should be abated, and claimant now asks and demands abatement of said amount for the following reasons:

We hereby claim abatement of tax assessed for the reasons set forth in letter attached hereto.

	RECEIVED	
(SEAL)	APR 21, 1930	
	Section G	
	Audit Review Division	

Sworn to and subscribed before me this 17th day of June 1920:

LOUIS W. GRATZ

Notary Public

in and for the County of Los Angeles, State of California.

Signed:

(Write name)	
(so it can)	TRUMBLE REFINING COMPANY
(be easily)	Per A. J. GUTZLER,
(read)	Secretary

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue without charge.)

CERTIFICATE OF ASSESSMENT

I certify that an examination of the records of the Commissioner's Office shows the following facts as to the assessment and payment of the tax:

Name and Address	Character of assessment or article taxed	Period covered by assessment	List	Year	Month	Page	Line	Amount
Trumble Refining Co. of Arizona, Higgins Bldg., LA	Income	1917	IT	1920	May	30	4	6,365.00
(SEAL)								
JOHN P. CARTER Collector								
----- Assessment Clerk, Internal Revenue Bureau								

Form 47	3
	1
District: 6th Calif.	5
Abatement Order No.	9
Corp'n. 1917	5
(nature of tax)	

Claimant: Trumble Refining Company of Arizona.
Address: L. A.

Examined and submitted for action: October 14, 1921
AE RBP 10/31/21

Claim ex-	Amount claimed:	\$6,365.00	
aminated by	Amount allowed:	\$	Committee on claims:
GB	Amount rejected:	\$6,365.00	WM. R. CAMPBELL
Claim ap-			J. C. ROGERS
proved by			FOD
A.H.F.			
Chief of	H.A.H.		RECEIVED
Division			AUG. 9, 1920:
	No returns		CLAIMS DIVISION :

"IT:T:SM
EMA-48751098

Los Angeles, California.
June 16, 1920.

"Mr. G. V. Newton
Acting Assisting to the Commissioner
of Internal Revenue,
Treasury Department,
Washington, D. C.

Dear Sir:

"We acknowledge receipt of your letter of February 21, 1920 with reference to our Income and Excess Profits Tax returns for the year ended December 31, 1917.

"We note your decision that our business should be classified as a concern normally requiring a substantial capital investment and that, therefore, assessments, under provision of Section 209 of the Act of October 3, 1917, had been disallowed.

"Before filing this return we endeavored to secure from your department a decision such as the above to guide us in the preparation of the return, but were unable to do so. However, regulations subsequent to the date of filing our 1917 return had already led us to the conclusion that we were in error in filing under Section 209 and the returns for 1918 and 1919 were filed in accordance with the regular provisions governing returns of concerns with invested capital.

"We have prepared and submit herewith a revised return for 1917, the total tax on which amounts to \$2,120.88. This amount differs from the amount of tax calculated by you principally because of the fact that we have deducted from income previously reported depreciation on

account of the expiring life of the royalty contracts in the amount of \$54,121.42 being one-fifteenth of the fair market value of said contracts on March 1, 1913.

"We respectfully request a refund of the amount of \$9,749.80, representing the difference between the amount paid, viz., \$11,870.68, and the tax shown in the amended return attached hereto, \$2,120.88. We also claim abatement of additional tax of \$6,365.00 assessed in accordance with your letter.

"In order that you may have complete information with which to review the attached amended return, we submit the following facts with respect to the organization and history of this company.

"The Trumble Refining Company was incorporated July 13, 1910 with an authorized capital stock of \$5,000,000.00, divided into 4,000,000 shares of common stock of \$1.00 each and 1,000,000 shares of preferred stock of \$1.00 each.

"The company immediately acquired from M. J. Trumble and F. M. Townsend all their rights in certain patents covering a process for refining petroleum, issuing in payment therefor 1,951,960 shares of common stock and 518,400 shares of preferred stock. Subsequently there was sold 1,248,040 shares of common stock and 281,600 shares of preferred stock for a consideration of \$135,355.25, making a total outstanding capital stock of 3,200,000 common and 800,000 preferred.

"The proceeds from the sale of stock were expended in the development of patents or in obtaining patents in foreign countries. By the year 1913, numerous contracts had been entered into for the use of these patents, and for the year 1913 the net income of the company amounted to \$30,438.06 and for 1914, \$39,860.49.

“In 1915 the company sold to the Shell Company for \$1,000,000.00 all of its letter patents of the United States and patents pending in the United States, together with all foreign rights thereto, the company retaining all contracts which were then in existence, representing business which had been developed. These contracts were entered on the books at a value of \$811,821.36, which was considered a fair value by the officers of the company, as this asset would not have been sold for less than that figure at the time. This value is substantiated by subsequent royalties received therefrom as follows:

Year 1916	\$94,475.33
Year 1917	96,499.59
Year 1918	80,456.50
Year 1919	84,761.37

“From the date of sale of the patent rights, the company was in process of liquidation, as these patents had an average life from March 1, 1913 of fifteen years, and at the end of that time royalties from the contracts would cease.

“The value of these contracts, \$811,821.36, should, therefore, be amortized over this period at the rate of \$54,121.44 annually, to insure the return of the capital to the stockholders.

“If the facts disclosed in this claim will not afford full relief and refund of the amount claimed, we respectfully request a full investigation of this claim before final action is taken.

Very truly yours,

(signed) A. J. GUTZLER”

EXHIBIT "E"

"RECEIVED
 JUN 18, 1920
 U. S. INT. REV. 6th CAL.

AMENDED CORPORATION INCOME TAX
 RETURN
 (FOR ALL CORPORATIONS EXCEPT RAILROAD
 AND INSURANCE COMPANIES)

<u>CAUTION</u>	:		:	(Do not write in this	:
Read this form and all	:		:	space)	:
instructions carefully	:		:	<u>Received</u>	:
and fill in supplement-	:		:		:
tary statement on back	:		:	List	:
of return first.	:		:	<u>Month Page Line</u>	:
Total in supplementary	:		:		:
statement must agree	:		:		:
with totals on face of	:		:	Audited by	:
return.	:		:		:
	:		:	48,751,098	:

Return of annual net income for the
 (calendar year 1917.

(fiscal year ended.....19.....

Name of corporation: Trumble Refining Company of
 Arizona.

Principal office: 916 Higgins Building, Los Angeles,
 California.

Kind of Business carried on: Leasing of oil refining
 process.

Date of organization:

1. Total amount of paid-up capital stock outstanding at the close of the year, or if there is no capital stock the capital other than interest-bearing indebtedness employed in the business at the close of the year. Unissued or treasury stock must not be included in this item, but only stock actually issued and outstanding at the close of the year for which this return is made.

(a) Paid-up 'common stock'	\$274,000.00
(b) Paid-up 'preferred stock'	545,800.00

Total paid-up stock	\$819,800.00

or (c) Capital employed in business \$
=====

2. Total amount of bonded or other interest-bearing indebtedness outstanding at the close of the year, exclusive of indebtedness wholly secured by collateral the subject of sale or hypothecation in the ordinary business of the company and exclusive also of indebtedness incurred in the purchase of securities, the income from which is not subject to income tax.

Character of obligation	Rate of Interest	Principal
.....		\$.....
.....		None
Total indebtedness		\$.....

INCOME

3. (a) Gross sales and other income from operations	\$
(b) Income from rentals, royalties, etc.	96,499.59
(c) Income from interest (see item 3c on back of return)	1,003.52
(d) Income from dividends (see item 3d on back of return)	
(e) Income from all other sources (see item 3e on back)	
	<hr/>
Total gross sales and other income	\$97,503.11

DEDUCTIONS

(See corresponding items on back of return.)

4. (a) Cost of goods and other property sold	\$
(b) Expenses, general	4,944.27
5. (a) Losses sustained charged off	
(b) Depreciation charged off	55,528.87
(c) Depletion charged off	ADDTL. 54,121.42
6. (a) Interest paid (except as entered under 6b and c)	
(b) Interest paid on deposits (for banks only)	

(c)	Interest paid on indebtedness wholly secured by collateral	
7.	(a) Domestic taxes paid, not including income and excess profits taxes	1,681.85
	(b) Foreign taxes paid	
		<hr/>
	Total deductions	62,154.99
	Less total deductions	62,154.99
		<hr/>
8.	Total net income	\$35,348.12
	Less: (a) Excess profits tax (item 12)	
	(b) Dividends received out of earnings of 1913, 1914, 1915	
	Total (a plus b) . . . . .	.....
9.	(a) Amount taxable at 2% (item 8 less total of a plus b)	35,348.12
	(b) Amount taxable at 1% (item 8b)	
10.	Amount of total net income shown in item 8 . . . . .	.....
	Less: (a) Excess profits tax (item 12)	
	(b) Dividends received (item 3d) . . . . .	.....
	Total (a plus b) . . . . .	.....
		<hr/>

11. Amount taxable at 4% (item 10 less total of a plus b) \$35,348.12

If return is made for a full fiscal year ended in 1917, compute tax on as many twelfths of item 11 as there are months from January 1, 1917, to the close of the fiscal year. Enter amount taxable here

TAX

12. Amount of excess profits tax (see instructions below) \$.....

13. Amount of 2% tax (2% of item 9a) 706.96

14. Amount of 1% tax (1% of item 9b)

15. Amount of 4% tax (4% of item 11) 1,413.92

16. Total tax assessable \$ 2,120.88

We, the undersigned, president and treasurer of the above-named company, whose return of net income is herein set forth, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report and in the supplementary statement and in any additional list or lists attached to or accompanying this return are, to his best knowledge and belief, true and correct in each and every particular.

TRUMBLE REFINING COMPANY OF ARIZ.

President

Per A. J. GUTZLER

Secretary

Treasurer

President out of city

Sworn to and)
 subscribed) this 17th day of June, 1920.
 before me)

Seal of officer : LOUIS W. GRATZ
 taking affidavit : Notary Public
 _____ In and for the county
 of Los Angeles, State
 (SEAL) of California.

GENERAL INSTRUCTIONS

General Instructions omitted as immaterial

SUPPLEMENTARY STATEMENT

The following information must be furnished, either on this sheet or on attached schedules, by every corporation, joint-stock company, or association. Without such information the return will not be accepted as complete. The items below relate to the correspondingly numbered items on the first page.

3. (c) FROM INTEREST.

Interest to be reported as income for the purpose of the income tax includes all interest received on bonds or securities owned by the corporation except interest on obligations of a State or political subdivision thereof or interest upon the obligations of the United States or its possessions.

3. (d) FROM DIVIDENDS RECEIVED.

Any distribution made or ordered to be made by a corporation out of its earnings or profits accrued since March 1, 1913, whether in cash or stock of the paying company, must be returned (under Item 3(d) on front page of this form) by the receiving corporation as income of the year in which the distribution was made or ordered to be made and will be taxed at the rates prescribed by law for the years in which surplus or profits distributed were earned, viz, 1% on amounts received out of earnings of 1913 (subsequent to March 1, 1913), 1914 and 1915, and 2% on amounts received from earnings of 1916 and 1917. A statement from the corporation paying the dividends included herein should be attached to this return, showing separately the amount of dividends paid out of earnings of each year: otherwise, they will be deemed to have been paid out of the earnings of 1917 and will be taxed 2%. The receiving corporation, in order that tax may be computed on dividends received in 1917 at the rates applicable to the years in which the profits were earned, must fill in the following form:

Dividends received in 1917 out of profits earned each year subsequent to March 1, 1913.

1913	1914	1915	1916	1917	Total
\$.....	\$.....	\$.....	\$.....	\$.....	\$.....

3. (e) FROM OTHER SOURCES.

Income received from all sources not elsewhere specified should be itemized below:

.....					\$.....
.....NONE.....					.....
Total	.	.	.	.	\$.....

4. (a) COST OF GOODS AND OTHER PROPERTY SOLD.

Report the cost of goods sold in the following form:

Merchandise bought for sale	\$.....
Cost of manufacturing or otherwise producing goods (if separately shown on books). (Submit schedule showing principal items of cost) . . . . .	.....
Plus inventories at beginning of year . . . . .	.....
Total N	\$.....
Less inventories at end of year O . . . . .	.....
Net cost of goods sold N	\$.....
E	
Explanations	

If the corporation makes inventories of merchandise or materials, explain the basis on which they are made, whether (a) at cost, or (b) at cost or market value, whichever is lower. If no inventories are made, make no entries referring to inventories, but report the total cost of goods purchased or produced during the year. If the cost of manufacturing or otherwise producing goods is not kept separate from general expenses in the corporation's accounts, include such cost in 'expenses, general', below.

Corporations dealing in real estate, and any corporation that has sold any of its capital assets during the taxable year, should report the cost of the property sold in the following form:

- | | |
|--|-------------|
| 1. Original cost of property | \$..... |
| 2. Market value March 1, 1913, if acquired
before that date | |
| 3. Cost of subsequent improvements, if any | N |
| 4. Depreciation and depletion to date of sale | O |
| 5. Net cost (item 1 or item 2 plus item 3
minus item 4) |E..... |
| State how market value March 1, 1913
was determined | |
-

Does such value include any good will?

If so, how much? \$.....

4. (b) EXPENSES, GENERAL.

This item should include only the ordinary and necessary expenses paid within the year in the operation of the business and maintenance of the properties of the corporation, itemized as per schedule below. It must not include any expenditures reported under 4(a), 5, 6 or 7.

Expenditures for incidental repairs which do not add to the value or appreciably prolong the life of property are deductible as expenses, but expenditures for new buildings, permanent improvements or betterments which increase the value of property, or for restoring or replacing property, are not deductible under this or any other item of the return. Such expenditures are prop-

erly chargeable to capital account, to be extinguished through annual depreciation charges.

Payments made to officers or employees, who are stockholders, in the guise of salaries or compensation, the amount of which is based upon the stockholdings of such officers or employees, are not deductible as a business expense.

1. Salaries of officers	\$2,400.00
2. Labor, wages, commissions, etc. (not included in 'Cost of manufacturing or otherwise, producing goods' under 4(a)) . . . . .	.....
3. Rents, royalties, and other payments in lieu of rent	810.00
4. Repairs, ordinary and incidental . . . . .	.....
5. Other expenditures (classify): Office and misc. : expenses	1,734.27
	<hr/>
Total expenses	\$4,944.27

If salaries were increased or extra compensation was paid to officers, state the amount, the reason therefor, and the basis on which computed.....

5. (a) LOSSES.

Losses deductible under this item must be distinguished from depreciation or allowances for exhaustion, wear and tear. The losses, not compensated by insurance or otherwise, must be absolute, complete, actually sustained during the year, and charged off on the books of the corporation.

Kind of property on which loss is claimed.	Cost of property	Cause of loss	Amount charged off within year
.....	\$.....		\$.....
.....		NONE.....	.....
Total.....	\$.....		\$.....

When were the deducted losses ascertained to be such?

How were they so ascertained?.....

The cost of property loss should be determined as indicated in item 4(a).

A bad debt offsetting income accrued since January 1, 1909, will not be allowed as a deduction unless the amount was reported as income for the year in which the debt was created.

State how the debts charged off (if any) were ascertained to be worthless.....

If at any future time a debt charged off as worthless is collected the amount collected must be returned as income for the year in which received.

Unpaid debts are not deductible if made good by recovery of property sold or retention of property pledged.

5. (b) DEPRECIATION.

The amount deductible on account of depreciation is an amount charged off which fairly measures the loss during the year in the value of physical property by reason of exhaustion, wear and tear. Such amount should be determined upon the basis of the cost of the property and the probable number of years constituting its life. Stocks, bonds, and like securities, as well as any other intangible

assets, are not subject to exhaustion, wear and tear within the meaning of the law. Hence, any amount charged off as representing a shrinkage in the value of such assets is not deductible either as depreciation or as a loss.

Depreciation computed on total invoice value of merchandise in stock is not an allowable deduction by reason of damage or obsolescence the merchandise is unsalable.

If a deduction is made on account of depreciation, the following statement must be filled in:

Kind of property	Its cost	Probable life after acquirement	Amount of depreciation charged off	
			This year	Previous year
Patented apparatus	\$ 21,689.12	8 years	\$ 1,203.96	\$10,123.81
Royalty contracts	811,821.36	15 years	54,121.42	
Office furniture	1,632.59		203.49	624.70
Totals	\$835,143.07		\$55,528.87	\$10,748.51

If building, state under 'kind of property' the material of which constructed.

5. (c) DEPLETION.

Depletion applies to the exhaustion of natural deposits, and contemplates a deduction to return to the corporation the capital invested, or in case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market price or value of such deposits as of that date. An allowable deduction on account of depletion must not exceed the fair market value as of March 1, 1913, or the cost subsequent to that date, of the product mined and sold during the year, and will be determined

in accordance with the rule set out in Articles 170 to 173, Regulations 33, Revised. The amount sought to be deducted on this account must be charged off on the books of the company.

*Kind of property	Its cost if acquired subsequent to	#Fair market value as of	Amount of depletion charged off	
	March 1, 1913	March 1, 1913	This year	Previous year
	\$.....	\$.....	\$.....	\$.....

N O N E

*Coal, iron ore, copper, oil, or gas.

#State how fair market value as of March 1, 1913, was determined?.....

6. INTEREST PAID.

(a) The amount of interest deductible under (a) is the amount actually paid within the year on an amount of bonded or other indebtedness (except on indebtedness falling under 6(b) or 6(c) and indebtedness incurred for the purchase of obligations or securities the income from which is exempt from income tax) not in excess of the paid-up capital stock outstanding at the close of the year, or if there is no capital stock, the entire amount of capital (not including interest-bearing indebtedness) employed in the business at the close of the year, plus, in each case, one-half of the interest-bearing indebtedness also then outstanding.

Capital employed in the business, as here used, contemplates the entire capital paid in by the members of the company, including so much of the accumulated surplus as is actually employed in the business, but does not in-

clude any borrowed capital or interest-bearing indebtedness.

(c) Interest paid (by banks) on deposits or on money received for investment and secured by interest-bearing certificates of indebtedness issued by a bank, banking association or loan or trust company is deductible in the entire amount so paid.

(c) If the corporation's indebtedness, or any part thereof, is wholly secured by collateral which is the subject of sale or hypothecation in the corporation's ordinary business as a dealer in such property, the interest paid on an amount of such indebtedness not exceeding the actual value of the collateral may be deducted.

Describe all obligations on which interest is paid in the following form. Distinguish plainly collateral loans falling under 6(c) and also obligations incurred for the purchase of securities, the income from which is exempt from income tax.

Kind of obligation	Amount of principal	Rate of interest	Amount of interest paid
.....	\$.....		\$.....
NONE			
.....			
Total.....	\$.....		\$.....

7. (a) TAXES PAID.

Taxes, paid or accrued on the books of the corporation during the taxable year, are deductible with the following exceptions: Federal income and excess profits taxes (including taxes paid on the interest on its own obligations

in pursuance of a covenant contained therein relieving the holder of liability for such taxes), foreign taxes on income derived from sources within the United States by foreign corporations, local taxes specially assessed against property on account of benefits derived from public improvements or betterments, and taxes upon the corporation's capital stock in the hands of the stockholders.

BASIS OF RETURN.

Is this return made on the basis of actual receipts and disbursements?

If not, describe fully what other basis or method was used in computing net income.....

UNDISTRIBUTED INCOME, SURPLUS, AND UNDIVIDED PROFITS.

Total net income of taxable year preceding that for which this return is made (less income tax paid thereon)	\$
Amount of such income remaining undistributed six months after the close of that year	
Amount of such income remaining undistributed twelve months after the close of that year	
Total surplus and undivided profits at close of taxable year	\$

If sufficient space is not provided for the entry of any information required in the 'Supplementary Statement', schedules in the form indicated, marked with the number of the item to be explained, should be attached to this form.

CORPORATION EXCESS PROFITS TAX RETURN

CAUTION	:	:	(do not write in this	:
Read all instructions.	:	:	space)	:
Answer all questions.	:	:	_____	:
If necessary, ask your	:	:	Received	:
Collector of Internal	:	:	.....	:
Revenue for assistance	:	:	List	:
_____	:	:	_____	:
	:	:	Month Page Line	:
	:	:	_____	:
	:	:	:
	:	:	Audited by	:
	:	:	48,751,098	:

Taxable year ended December 31, 1917

Name: Trumble Refining Company

Business Address:

Kind of Business.....Date established 1910

GENERAL INSTRUCTIONS

General Instructions omitted as immaterial.

SCHEDULE I. Net income for Taxable Year Subject to Excess Profits Tax.

1. Net income for taxable year shown in Item 8, Form 1031 \$89,469.54
2. Plus interest on obligations of the United States issued since September 24, 1917, held by corporation in excess of \$5,000.00 par value
3. Total \$

4. Less: (a) Dividends received as shown in Item 3d, Form 1031 . . . \$
5. (b) Interest paid (not in excess of legal limit) on indebtedness incurred for purchase of obligations reported in item 2, above
6. Net income subject to excess profits tax \$89,469.54

SCHEDULE II. Invested Capital.

Item	1911	1912	1913	Taxable year
1. Capital, surplus and undivided profits at the close of the preceding year as shown by corporation's books before making any adjustments therein (from Schedule A)	\$.....	\$.....	\$.....	\$851,228.27
2. Adjustments by way of additions (from Schedule B)				
3. Total	\$.....	\$.....	\$.....	\$851,228.27
4. Adjustments by way of deductions (from Schedule C)				811,821.36

5.	Invested capital at beginning of year (Item 3 less Item 4) . . .	\$.....\$.....\$.....\$	39,406.91
6.	Changes in invested capital during year (from Schedules D and E) . . . . .	.....	.....
7.	Invested capital for year	\$.....\$.....\$.....\$	39,406.91
8.	Total invested capital for prewar period	\$	

SCHEDULE III. Deduction.

1.	Percentage—net income to invested capital for prewar period. (Item 6, Schedule F, divided by Item 8, Schedule II. Carry our result as far as desired, but drop the remainder, if any, without increasing the last figure of the percentage)%	
2.	Percentage to be used in computing deduction (see Instruction 5)%	
3.	Amount of deduction computed at above rate on invested capital for taxable year	\$	
4.	Exemption (except for foreign corporations)		\$3,000.00
Total deduction			_____

SCHEDULE IV. Computation of Tax

Classes of Income for Computation of Tax		Amount of income in each class	Deduction (if in excess of 15 per cent of invested capital, enter only 15 per cent on first line and balance on line or lines below		Balance subject to tax	Rate	Amount of tax
Over	But not over		3	4			
1	2	3	4	5	6	7	
\$0.00	15% of invested capital	.....	.....	.....	25%	.....
15% of invested capital	20% of invested capital	\$.....	\$.....	\$.....	20%	\$.....	
20% of invested capital	25% of invested capital	\$.....	\$.....	\$.....	35%	\$.....	
25% of invested capital	33% of invested capital	.....	.....	.....	45%	.....
33% of invested capital		.....	.....	.....	60%	.....
Total		\$.....	\$.....	\$.....	xx	\$.....	

SCHEDULE A. Capital, Surplus, and Undivided Profits as Shown by Books Before Making any Adjustments Therein.

A4. Stock actually outstanding (not in the corporation treasury) at the end of the preceding taxable year may be counted as invested capital to the extent that it is paid up.

A6. Reserves consisting of amounts not deductible in the computation of net income under the income tax law, may, if properly explained, be included as part of the surplus for the purpose of computing the invested capital.

Item	1911	1912	1913	Taxable year
Capital stock paid up and actually outstanding at the close of the preceding year (not including treasury stock):				
1. First preferred	\$.....	\$.....	\$.....	\$545,800.00
2. Second preferred	
3. Common	274,000.00
				<hr/>
Total	\$.....	\$.....	\$.....	\$819,800.00
Surplus and undivided profits:				
5. Paid-in surplus	\$.....	\$.....	\$.....	\$
6. Earned surplus	
7. Undivided profits	31,428.27
				<hr/>
8. Grand total of items 4, 5, 6 and 7	\$.....	\$.....	\$.....	\$851,228.27

SCHEDULE B. Adjustments by Way of Additions.

B1. If any part of the interest on the corporation's permanent indebtedness was excluded as a deduction from the corporation's income for any year (see Form 1031), a proportionate part of such indebtedness may be added to invested capital for that year as Item 1, Schedule B.

B2. If any addition to invested capital is reported in Item 2, Schedule B, submit a full statement showing the kind of property, the date when paid in, its value on that date, and how the value was determined.

B3. If an addition to invested capital is reported in Item 3, Schedule B, submit a statement showing the kind of property, its cost, and the year in which it was acquired.

B4. If any addition to invested capital is reported in Item 4, Schedule B, state specifically the amount of depreciation or depletion written off each year in the books of the company and the amount allowed as a deduction in computing taxable income.

Item	1911	1912	1913	Taxable year
1. Proportion of permanent indebtedness, the interest on which is not deductible from income in computing income tax (Article 44)	\$.....	\$.....	\$.....	\$.....
2. Value of tangible property in excess of par value of stock issued therefor (Article 63)	N	O.....	.....	.....
3. Additions to capital account allowable under Article 64 . . .	N	E	.....	.....

4.	Depreciation charged in accounts of corpo- ration but disallowed by Treasury Depart- ment as expense on in- come tax returns	-----	-----	-----	-----
5.	. . . . .	-----	-----	-----	-----
6.	. . . . .	-----	-----	-----	-----
7.	Total	\$.....	\$.....	\$.....	\$.....

SCHEDULE C. Adjustments by Way of Deductions.

C1. Is any good will, trade-mark, trade brand, franchise, or similar intangible property, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when paid in? *Cannot tell In excess of the par value of the stock issued therefor? * In excess (in aggregate) of twenty per cent of the par value of the stock outstanding on March 3, 1917? *See letter of explanation attached.

If so, submit a statement showing (a) date of acquisition; (b) cash value at that date; (c) par value of stock issued therefor; (d) par value of total stock outstanding on March 3, 1917; and (e) value at which the assets are entered on the books of the corporation.

The amount by which 'e' exceeds 'b), 'c' or twenty per cent of 'd', whichever is lowest, must be entered as Item 1, Schedule C, for the taxable year and for each year of the prewar period that is affected.

C2. Is any patent or copyright, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when paid in? No In excess of the par value of the stock issued therefor? No

If so, submit a statement showing (a) date of acquisition; (b) cash value of the patent or copyright at that date; (c) par value of the stock issued therefor; and (d) value at which the patent or copyright is entered on the books of the corporation.

The amount by which 'd' exceeds 'b' or 'c', whichever is the lower, must be entered as Item 2, Schedule C, for the taxable year and for each year of the prewar period that is affected.

C3. Is any tangible property, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when received No In excess of the par value of the stock paid therefor? No

Is any tangible property paid for specifically with stock before January 1, 1914, entered on the books of the corporation at a value in excess of its actual cash value on that date?

If the answer to any of the foregoing questions is 'yes', submit a statement showing (a) kind of property; (b) when acquired; (c) par value of the stock paid therefor; (d) actual cash value of the property when paid in; (e) actual cash value of the property on January 1, 1914, if paid in before that date; (f) basis of the valuation stated under 'e'; (g) value at which the property is entered on the corporation's books; and (h) amount by which such value exceeds the allowable value under Article 55 of the Excess Profits Tax Regulations. Enter this amount as Item 3, Schedule C, for the taxable year

and for each year of the prewar period that is affected. (Note that the value January 1, 1914, does not affect the prewar period.)

C4. (a) Was any stock issued by the corporation ever returned as a gift or for a consideration substantially less than its par value? No (b) If so, what was the par value of such stock? (c) What amount of cash or its equivalent was derived from the resale of such stock? \$ None

The excess of 'b' over 'c' must be entered as Item 4, Schedule C, for the taxable year and for each year of the prewar period that is affected.

C5. Was the business reorganized or consolidated, or was its ownership changed after March 3, 1917? No If so, answer the following questions:

(a) Did an interest in the business of fifty per cent or more remain in the control of the same persons, corporations, associations, or partnerships, or of any of them?

(b) Were any of the assets entered on the books of the corporation making this return at a higher value than on the books of its predecessor?

(c) If so, were such assets paid for specifically as such in cash or tangible property?

The increase in book value of any property not so paid for must be deducted from the invested capital for the taxable year as Item 5, Schedule C, unless it can be shown that under the excess profits law and regulations the property was undervalued on the books of the predecessor business.

C6. Is any property paid for with cash or with other tangible property entered on the books of the corporation

at a value in excess of the amount of cash paid therefor or the actual cash value of the tangible property paid therefor? No If so, submit a statement showing (a) kind of property; (b) amount of cash paid therefor; (c) actual cash value of other tangible property paid therefor; (d) How that value was determined; (e) value at which the property is entered on the books of the corporation; and (f) excess of 'e' over 'b' or 'c'. This excess must be entered as Item 6, Schedule C, for the taxable year and for each year of the prewar period that is affected.

C7. Has adequate provision been made in the expense accounts of the company for (a) losses of every kind?; (b) depreciation?; (c) Obsolescence?; (d) depletion of mineral deposits, timber supplies and the like?

If adequate charge has not been made for depreciation, depletion, obsolescence, and other losses, and the value of the property has not been maintained by replacements that have been charged to expense, proper additional charges for depreciation must be computed for all years in which they were not made on the books, and the total amount of such charges must be entered as Item 7, Schedule C, for the taxable year (and for each year of the prewar period that was affected) and deducted in arriving at its surplus and undivided profits.

C8. Has the corporation any stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to excess profits tax? No If so, at what value are they carried on the corporation's books? \$..... Has any portion of such assets been included in invested capital in accordance with Articles 45 and 46 of the Excess Profits Tax Regu-

lations? If so, how much? \$..... Is the balance in excess of the corporation's indebtedness, excluding the amount thereof that has been included in invested capital as Item 1, Schedule B? If so, state the amount of such excess. \$.....

Enter this amount as Item 8 in Schedule C, for the taxable year, and make a similar correction for each year of the prewar period.

Adjustment on Account of (See corresponding instructions on page 2)	1911	1912	1913	Taxable year
1. Valuation of good will, trade-marks, trade brands, franchises, or other intangible property purchased with stock (Articles 57 and 58)			See letter of explanation attached.	\$811,821.36
2. Valuation of patents and copyrights paid in for stock (Article 56)	
3. Valuation of tangible property paid in for stock (Article 55)	
4. Stock returned to corporation as a gift, etc. (Article 54)	
5. Valuation of assets acquired in reorganizations (Article 50)	

6. Appreciation (Article 42) . . . . .	.....	.....	.....
7. Depreciation and depletion (Article 42) .....	.....	.....	.....
8. Excess of stocks and other inadmissible assets over indebtedness (Article 44) . . . . .	.....	.....	.....
9. . . . .	.....	.....	.....
10. . . . .	.....	.....	.....
11. Total deductions . \$.....\$.....\$.....			\$811,821.36

SCHEDULE D. Changes in Invested Capital During Taxable Year.

Specify (by using red ink for distributions, or otherwise) whether each item represents an addition or a distribution.

Report dividends paid out of profits of prior years but not dividends paid out of profits of the taxable year.

In column 4 enter the number of whole months remaining in the year, plus a fraction consisting of the number of days remaining in the month (including the date of change) divided by the total number of days in the month.

Assets (other than cash) paid in for stock, must be valued in accordance with Articles 55 to 60 of the Excess Profits Tax Regulations.

Nature of additions and distributions	Date	Amount	Number of months effective	Adjusted average (Col. 3 X Col. 4) (12)
1	2	3	4	5
1		\$.-----		\$-----
2		-----		-----
3		-----		-----
4N.		-----		-----
5O.		-----		-----
6N.		-----		-----
7E.		-----		-----
8		-----		-----
9. Net addition or reduction		\$.-----		\$-----

SCHEDULES E and F

Schedules E and F omitted as immaterial

QUESTIONS

1. Explain the nature of the corporation's business if not adequately described on first page:
 - (a) Main business
 - (b) Collateral businesses, if any
 2. Date of incorporation
 3. Under the laws of what State or country?
 4. Enter on the following lines the names and addresses of three representative concerns in your locality engaged in the same kind of business
-

5. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any)? Specify the year
.....
6. If any patent is included among your assets, attach a schedule to this return showing for each patent its serial number, date of issue, name of patentee, amount of cash or stock paid therefor, and its present book value
7. If the corporation ever took over a going business or otherwise acquired a mixed aggregate of tangible property, patents, and copyrights, and good will and other similar intangible property, and paid for such property in whole or in part with stock or other securities, submit a statement showing—
- (a) The name of the concern taken over (or from which the property was acquired).
 - (b) The nature of the assets and liabilities so acquired.
 - (c) The total par value of the stock issued therefor.
 - (d) The value at which each class of assets was carried on the books of the concern from which acquired. (If obtainable submit a balance sheet of the predecessor corporation as at the date of acquisition.)

- (e) The value at which each item was entered on the books of the corporation making this return. The different classes of property must be valued as prescribed by Article 59 of the Excess Profits Tax Regulations and the values so obtained must be used in making adjustments 1, 2 and 3, Schedule C.

If patents or copyrights were acquired, state the basis on which their value was determined, and how they were paid for.

If good will or other intangible assets were acquired, state the basis on which their value was determined, and how they were paid for.

- 8. Is the corporation affiliated with one or more other corporations within the meaning of Article 77 of the Excess Profits Tax Regulations? If so, submit a statement describing all its intercorporate relationships.

.....
.....
.....

- 9. Is this return a consolidated return within the meaning of Article 78 of the Excess Profits Tax Regulations? If so, submit a schedule showing in detail the computation of the consolidated invested capital and income.

10. If the corporation was not in existence during the whole of any one of the calendar years 1911-1913, is its business substantially a continuation of a business carried on during any one or more of those years? If so, give name under which, and address at which, its business was then carried on.....

11. Submit a copy, in detail, of—

- (a) The balance sheet of the corporation at the beginning of the taxable year.
- (b) The balance sheet of the corporation at the close of the taxable year.

We, the undersigned, president and treasurer of the above-named company, being severally duly sworn, each for himself deposes and says that the foregoing return, including the accompanying schedules and statements (if any), has been examined by him and is to the best of his knowledge and belief a true and complete return made in good faith pursuant to the Excess Profits Tax Regulations.

Sworn to and)
 subscribed) this day of, 19.....
 before me)

Seal of off- :
 cer taking afi- : President
 fidavit. : (Official capacity)
 _____ Treasurer”

EXHIBIT "F"

"CLAIM FOR REFUND

Taxes Erroneously or Illegally Collected.

Also Amounts Paid for Stamps Used in Error or Excess.

<hr/>			
:	IMPORTANT	:	
:	This claim should be for-	:	Date of filing to
:	warded to the Collector	:	be
:	of Internal Revenue to	:	
:	whom the Tax was paid	:	
:	and must be accom-	:	plainly stamped here
:	panied by Collector's Re-	:	
:	ceipt therefor	:	
<hr/>			

STATE OF California)
) ss
 COUNTY OF Los Angeles)

Write name : Trumble Refining Company of Arizona
 so it can : (Name of Claimant)
 be easily : Higgins Building, Los Angeles, California.
read : Address of claimant; give street and
 number as well as city or town, and
 State.)

This deponent being duly sworn according to law deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to the claim are true and complete:

1. Business engaged in by claimant: Leasing use of refining process.

2. Character of assessment of tax: Income and Profits Tax—1917

(State for or upon what the tax was assessed or the stamps affixed.)

3. Amount of assessment or stamps . . . \$11,870.68

4. Amount now asked to be refunded (or such greater amount as is legally refundable) 9,749.80

5. Date of payment of assessment or purchase of stamps: June 15, 1918

Deponent verily believes that the amount stated in Item 4 should be refunded and claimant now asks and demands refund of said amount for the following reasons:

We hereby claim refund of tax paid for the reasons set forth in letter attached hereto.

:	RECEIVED	:
:	APR 21, 1930	:
:	Section G	:
:	AUDIT REVIEW SEC	:

And this deponent further alleges that the said claimant is not indebted to the United States in any amount whatever, and that no claim has heretofore been presented, except as stated herein, for the refunding of the whole or any part of the amount stated in Item 3.

Signed:

: Write name : : so it can : : be easily : : read :	TRUMBLE REFINING CO., OF ARIZ. Per A. J. GUTZLER Sec'y.
--	--

Sworn to and subscribed before
me this 2nd day of July, 1920.

(SEAL) LOUIS W. GRATZ
 (Name) Title)

(This affidavit may be sworn to before a Deputy Collector
of Internal Revenue without charge.)

CERTIFICATES

I certify that an examination of the records of the
Bureau of Internal Revenue shows the following facts as
to the assessment and payment of the tax :

Name of Taxpayer	Character of assess- ment and period covered	List	Year	Month	Page	Line	Amount	Date paid	District
									in which paid

Trumble Refin- ing Co. of Arizona.	Income	1918	May	198	13	\$11,870.68		6th Cal. 6/14/1918	
--	--------	------	-----	-----	----	-------------	--	-----------------------	--

7
8
1 (SEAL)
8
0

JOHN P. CARTER
Collector of Internal Revenue

.....
Assessment Clerk, Commissioner's Office

I certify that the records of my office show the follow-
ing facts as to the purchase of stamps:

To whom sold or issued	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamp, state:	
						Serial number	Period commencing

5
2
3
1
4

.....
Collector.....District.....

Form 46

Schedule Number District 6th California.

Allowed or Rejected Number Corp.—1917
 (Nature of tax)

Claimant: Trumble Refining Co. of Arizona.

Address: Los Angeles

Examined and submitted for action October 14, 1921

AR LBP 10/31/21	:	RECEIVED	:
_____	:	AUG 9, 1920	:
: Claim exam-	:	CLAIMS DIVISION	:
: ined by—	:	_____	:
: G. B.	:		:
:	:	Amount claimed: \$9,749.80	:
: Claim ap-	:	Amount allowed: \$:
: proved by	:	Amount rejected: \$9,749.80	:
: A. H. F.	:		:
: Chief of	:	Committee on claims	:
: Division	:	WM. R. CAMPBELL	:
_____	:	J. C. ROGERS	:
		F. O. D.	

H. A. H.

No returns''

EXHIBIT G

“IT:SA:NR:A

GB-48751098

“Trumble Refining Company of Arizona,
Higgins Building,
Los Angeles, California.

Sirs:

“Your claims for the refund of \$9,749.80, part of income and excess profits tax for the year 1917, and for the abatement of \$6,365.00 additional income and excess profits tax for the year 1917, as outlined in office letter dated February 21, 1920, have been examined.

“The claims are based upon an amended return filed for the year 1917. There is deducted thereon \$54,121.42 as amortization of the value of certain contracts set up on the books of the corporation as an asset.

“Examination discloses that the contracts have no value for income tax purposes. The arbitrary valuation set up by the corporation was for the purpose of offsetting an issue of capital stock for which no cash payment was made.

“The audit for the year 1917 made in this office as set forth in letter dated February 21, 1920, was correct and the additional assessment legally made.

“The claims are, therefore, rejected.

Respectfully,

Commissioner

	Claim No. 77826	Claim No. 78180
	Abatement	Refund
Claimed	\$6,365.00	\$9,749.80
Rejected	\$6,365.00	\$9,749.80

mlb”

EXHIBIT H

"CLAIM FOR ABATEMENT

Taxes Erroneously or Illegally Assessed

_____	_____
: IMPORTANT :	: Date of filing to be :
: This claim should be :	: _____ :
: forwarded to the Col- :	: : RECEIVED : :
: lector of Internal :	: : JAN 23, 1922 : :
: Revenue from whom :	: : U. S. INT. REV. 6th : :
: notice of assessment :	: : _____ CAL : :
: was received. :	: : _____ :
_____	: plainly stamped here :

State of California)
) ss
 County of Los Angeles)

: Write name : Trumble Refining Company
 : so it can : (Name of claimant)
 : be easily : Higgins Building,
 : read. : Los Angeles, California.
 _____ (Address of claimant; give street and
 number as well as city or town, and
 state.)

May 1920. P. 30. L.4.

May 1920 30/4

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the

claimant named above, and that the facts stated below with reference to said claim are true and complete:

1. Business engaged in by claimant: Leasing use of refining process.
2. Character of assessment or tax: Additional income and excess profits taxes for 1917 and interest.
3. Amount of assessment \$6,365.00
4. Amount now asked to be abated \$6,365.00

Deponent verily believes that the amount stated in item 4 should be abated, and claimant now asks and demands abatement of said amount for the following reasons:

The additional tax of \$6,365.00 arose from an office audit of the returns of this corporation. An examination of the books of this company in connection with the determination of our tax liability for the years 1917 to 1920, inclusive, was completed by Internal Revenue Agent C. F. Degele on September 26, 1921. A statement of facts has been prepared for consideration by the Field Audit Division in connection with the audit of the revenue agent's report, which statement shows that this company is entitled to a refund, and accompanies the claim herewith.

Under the above conditions it is respectfully requested that the additional tax and interest arising from the office audit (now superceded) be abated.

: Abatement card :	: RECEIVED :
: made 2/4/22 :	: APR 21, 1930 :
	: Section G :
	: Audit Review Division :

Signed:

: Write name :
 : so it can : TRUMBLE REFINING COMPANY
 : be easily : F. M. TOWNSEND,
 : read. : President.

Sworn to and subscribed before
 me this 21st day of January, 1922.

(SEAL)

PEARL TRALLE

Notary Public

in and for the County of
 Los Angeles, State of
 California.

(This affidavit may be sworn to before a Deputy Col-
 lector of Internal Revenue without charge.)

CERTIFICATE OF ASSESSMENT

I certify that an examination of the records of the
 Bureau of Internal Revenue shows the following facts as
 to the assessment and payment of the tax:

Name and Address	Character of assess- ment or ar- ticle taxed.	Period covered by assessment	List	Year	Month	Page	Line	Amount
Trumble Re- fining Company, Higgins Bldg., Los Angeles, Cal.	Income	1917 Add'l Tax.	"20-	May	30	4		Outstanding—\$6,365.00

(SEAL)

JOHN P. CARTER

Collector of Internal Revenue

.....
 Assessment Clerk, Commissioner's Office

Form 47.

Abatement Order No. District 6th Calif.
Corp. 1917
(Nature of tax)

Claimant Trumble Refining Co.

Address Los Angeles,

Examined and submitted for action 19.....

: Claim ex-	:	
: aminated by—	:	
:	:	Amount claimed: \$6,365.00
: Claim ap-	:	Amount allowed: \$
: proved by	:	Amount rejected: \$
:	:	
: Chief of	:	Committee on Claims:
: Division	:	-----

Adjusted under certificate
of overassessment #308813

SA:SM Section

SAMUEL J. MELICK
JAN 25, 1923"

EXHIBIT "I"

"TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue January 19, 1923

Address reply to
Commissioner of Internal Revenue
and refer to
IT:SA:SM
HSD-846

"Trumble Refining Company,
Higgins Building,
Los Angeles, California.

Sirs:

"The Revenue Act of 1921 provides that assessment of additional income and profits taxes for the taxable year 1917 must be made within five years after the date when such return was filed.

"The Commissioner of Internal Revenue is reluctant to proceed to impose assessments based upon a superficial determination of the true tax liability and in his judgment, both for the interests of the Government and the taxpayer, assessments should be made only after a thorough audit and careful consideration of all the facts in the case.

“However, in view of the limitation of time to permit the completion of this program it is requested that you execute and return to this office the enclosed form of waiver.

Respectfully,

E. W. CHATTERTON,
Deputy Commissioner

By S. ALEXANDER
Head of Division.

Enclosure:
Waiver.

EXHIBIT “J”

“IT:SA:SM
HSD-846

January 31, 1923
(Date)

: RECEIVED :
: FEB 8, 1923 :
: SPECIAL ASSESS- :
: MENT SECTION :

INCOME AND PROFITS TAX WAIVER

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, Trumble Refining Company of Los Angeles, Calif. and the Commissioner of Internal Revenue hereby consent to a determination, assessment, and collection of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of the said corporation for the years 1917 under the Revenue Act of 1921, or under prior income, excess-profits, or war-profits tax Acts, or under Section 38 of the Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes', approved August 5, 1909, irrespective of any period of limitations.

TRUMBLE REFINING COMPANY

By F. M. TOWNSEND,

President

Taxpayer

By

(SEAL)

D. H. BLAIR

A

Commissioner

"If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed."

EXHIBIT "K"

"February 5, 1923

"IT:SA:SM

HSD-846

"Trumble Refining Company of Arizona,
Higgins Building,
Los Angeles, California.

Sirs:

"Reference is made to your income and excess profits tax returns for the calendar year 1917.

"You are advised that your tax has been redetermined under the provisions of Section 210 of the Revenue Act of October 3, 1917.

"The result of an audit under the above provisions of the law is summarized as follows:

Net income	\$88,727.83
Total tax assessable	<u>\$18,084.51</u>
Overassessment indicated	<u>\$ 151.17</u>

"The total tax assessable is based upon the experience of a group of concerns, which in the aggregate may be said to be engaged in a like or similar trade or business to that of your company.

"The overassessment indicated will be made the subject of a certificate of overassessment, which will be scheduled and presented through the office of the Collector of Internal Revenue for your district as promptly as possible.

Respectfully,

R. W. CHATTERTON,

Deputy Commissioner.

By (signed) F. B. BELL

Chief of Section

EXHIBIT L

RECEIVED :
 FEB. 24, 1923 :
 Collector of :
 Int. Rev. :
 6th District :
 of California :

IMMEDIATE
 This schedule must be executed and all
 required steps taken without delay.
 Commissioner of Internal Revenue.

"SCHEDULE OF REDUCTIONS OF TAX LIABILITY
 and
 ALLOWANCE OF ABATEMENTS AND CREDITS
 INCOME TAX UNIT

C-3621 ORIGINAL
 Voucher to General Accounting Office

4677
 Schedule No. IT-A
 Sheet 1 of 2 sheets

15576.52

CERTIFICATE OF DEPUTY COMMISSIONER

AUTHORIZATION OF COMMISSIONER

CERTIFICATE OF COLLECTOR

Commissioner of Internal Revenue:

To the Collector, 6 California District:

To the Commissioner of Internal Revenue:

Accounts Unit
 Noted and Entered

The returns of the taxpayers listed herein, together with their claims (if any) and appropriate supporting evidence, have been carefully examined and the tax liability of the respective taxpayers has been determined in accordance with the available facts and the law. The reductions in tax liability appearing in column 4 are accordingly recommended for allowance.

The several amounts herein noted as reduction of tax liability are hereby approved and allowed.

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

Initials Date :
 C. O. C. 5/28/23 :
 : :

Date: February 17, 1923.

E. M. CHATTERTON,
 Deputy Commissioner.

You will immediately check the items herein against the accounts of the several taxpayers and determine whether the several amounts in which the tax liability has been reduced should be abated in whole or in part and make such abatement as may be warranted by the condition of the taxpayer's account for the year involved.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date: April 23, 1923.

JOHN T. RILEY
 Deputy Collector in Charge
 6th Calif. District.

If any part of the tax is found to be an overpayment, you will examine all accounts of the taxpayer for subsequent periods and apply such overpayment as a credit against the tax owing (if any) on the taxpayer's account for subsequent periods. (This applies to income, war profits, and excess profits taxes only.)

The balance (if any) of the overpayment shall be entered in column 12 and placed upon a schedule of refunds (Form 7777A) and an appropriate memorandum made upon the taxpayer's account.

You will thereupon complete and certify this schedule and Schedule 7777A and return three copies of each to the Commissioner of Internal Revenue at Washington, making the appropriate entries in your accounts.

Date: February 17, 1923.

D. H. BLAIR,
 Commissioner of Internal Revenue.

15,576.52 (Entries to be made by the Collector)

Item No.	Certificate of over-assessment or claim number	Name and Address of taxpayer	Reduction of tax liability (Amount)	List, page and line or account number	Year	Abatement			Account to be credited; list, page, and line.	Abated in excess	Net amount refundable carried to Form 7777A	Remarks
						(Amount)	(Amount)	(Amount)				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
X	X X	Totals of 55 items in this Schedule		X X X	X	15,454.74		121.78	X X X			X X
53	308813	Trumble Refining Co. of Arizona	151.17	5/18/198/13 5/20/30/4	17	151.17						

1
e
] e
] e
] e
s
f
t
e
t

EXHIBIT M

“February 23, 1923.

“Commissioner of Internal Revenue,
Washington, D. C.

Re IT:SA:SM-HSD-846

Sir:

“Reference is made to your letter dated February 5, 1923, file reference as above.

“It is noted that the tax liability of this corporation for the year 1917, has been redetermined under the provisions of October 3, 1917.

“On February 1, 1922, this corporation filed with the Commissioner of Internal Revenue a brief presenting objections to additional taxes recommended by a revenue agent, for the years 1917 to 1920, and stating the facts on which the determination of the tax liability would be based.

“On December 29, 1922, an income and profits tax waiver for the year 1917 was forwarded in response to the request made by the Income Tax Unit to our representative, E. P. Adams, on December 9, 1922, at an informal conference. At this conference, a request was made by Mr. Adams that a determination of the case be made only after a consideration of all years involved in the agent's report, and that an opportunity be given this corporation to submit additional arguments at a hearing in Washington.

“Under the conditions as stated above, it is respectfully requested that further action be withheld in the matter of the entering of the over-assessment for the year 1917, referred to in the letter dated February 5, 1923.

Respectfully,

TRUMBLE REFINING CO.

By F. M. T.

President

FMT
W”

EXHIBIT N

"WESTERN UNION

PAID—CHARGE Haskins & Sells,
Los Angeles, Calif.
May 15, 1923.

"Commissioner of Internal Revenue,
Washington, D. C.

"Referring our letter February twenty-third file IT COLON SA COLON SM DASH HSD DASH EIGHT FOUR SIX Stop Local Collector demands payment nineteen seventeen additional taxes six thousand two hundred thirteen eighty three and states it will be necessary to have wire authority from you to withhold collection pending hearing requested our letter. In view of understanding at informal conference December ninth and fact that questions involved in nineteen seventeen affect all years, please instruct collector withhold collection pending conference and advise us date set for such conference at which all years may be considered Stop We have filed bond with collector in amount one hundred fifty per cent of tax.

TRUMBLE REFINING COMPANY
OF ARIZONA"

EXHIBIT O

"TREASURY DEPARTMENT TELEGRAM

Where written:

Washington

IT:SA:SM

HSD-846

May 21, 1923

"An answer 15. c/o I. B. - WU
Trumble Refining Co. of Arizona,
Los Angeles, California.

"Reply telegram fifteenth. No authority to instruct
Collector Accept abatement claim to replace claim re-
jected Conference may be arranged on nineteen seven-
teen case if formal protest is filed but is impracticable on
later years until information submitted is considered and
audit completed.

E. W. CHATTERTON

Deputy Commissioner

: Treasury Department :
: DISPATCHED :
: MAY 21, 1923 :
: Internal Revenue :

EXHIBIT P

“(Execute Separate Form for Each Tax Period

CLAIM FOR

- () Abatement of Tax Assessed.
- () Credit Against Outstanding Assessments
- (X) Refund of Taxes Illegally Collected
- () Refund of Amounts Paid for Stamps
used in error or excess

: _____	: NOTICE TO COLLECTOR.	: _____	:
: IMPORTANT	: _____	: Collector's Notation	:
: File with Collector	: Collector must indicate	: _____	:
: of Internal Revenue	: in block above the kind	: <u>District: 6 Cal.</u>	:
: where assessment	: of claim, except in	: Account Number:	:
: was made. Not	: Income Tax cases.	: May 1918 List P 198	:
: acceptable unless	:	: L. 13.	:
: completely filled in.	: _____	: _____	:
: _____	: Date received by	: Date received:	:
	: Administrative Unit	: May P 30. L 4,	:
	: _____	: 1920 List.	:
	: RECEIVED	: : : _____	:
2908	: MAY 7, 1929	: : : RECEIVED	:
	: CLAIMS CON-	: : : APR 25, 1929	:
	: TROL SEC-	: : : INTERNAL	:
	: TION.	: : : REVENUE	:
	: _____	: : : 6th Cal.	:
	: Stamp here	: : : _____	:
	: _____	: Stamp here	:
		: _____	:
		: Collector of Inter-	:
		: nal Revenue.	:
		: _____	:

State of California)
) ss
County of Los Angeles)

2

0 _____

9 : Type : Trumble Refining Company of Arizona

7 : or : (Name of taxpayer or purchaser of

4 : Print : stamps)

7 _____ 756 Subway Terminal Building

1 (Residence—give street and number as well as city or town and state.

Los Angeles, California.

(Business address)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged: Licensing patents : Period : Year :
: From: January 1, 1917 :
: To: December 31, 1917 :

2. Character of assessment or tax: Income Tax
(State for or upon what the tax was assessed or the stamps affixed.

3. Amount of assessment or stamps purchased . . . \$18,084.51 ~~\$17,764.08~~

4. Reduction of Tax Liability requested (Income and Profits Tax)
5. Amount to be abated
6. Amount to be refunded (or such greater amount as is legally refundable) 17,764.08
7. Dates of payment (see Collector's receipts or indorsements of canceled checks)
 (If statement covers income tax liability, items 8-11, inclusive, must be answered)
- Mar 15, June 15,
 Sept. 15 & Dec. 15,
 1918.
 Paid 6/14/18;
 2/17/23—5/22/23.
8. District in which return (if any) was filed: Los Angeles, California.
9. District in which unpaid assessment appears:
10. Amount of overpayment claimed as credit \$
11. Unpaid assessment against which credit is asked; period from to \$

Deponent verily believes that this application should be allowed for the following reasons:

Refund due in accordance with decision of U. S. Board of Tax Appeals, Docket Nos. 11763, 17492, 26434 and 32151, allowing amortization of patent rights and royalty contracts of \$72,511.90 annually. This claim filed in accordance with provisions of Section 252 of Revenue Act of 1921 and Section 248 C of 1926 Act, and rulings cov-

ering by IT: 1717 CB December 1923, Page 247; IT: 1870 and IT: 1871 CB. December 1923, pages 248 and 249, also IT: 2066 C.B. December 1926, Page 318.

See statement attached for computation.

:	RECEIVED	:	Add. tax
:	APR 21, 1930	:	Assm't 5/1920
:	SECTION G	:	Last tax pd.
:	AUDIT REVIEW DIVISION	:	5/22/23

Signed:

TRUMBLE REFINING COMPANY
OF ARIZONA

By A. J. GUTZLER,

Secretary

Sworn to and subscribed before me this 24th day of April, 1929.

(SEAL)

CORNELIUS M. ENNS

Notary Public

In and for the County of
Los Angeles, State of
California.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

CERTIFICATES Omitted as immaterial.

Schedule Number District
 Allowed or Rejected Number
 (Nature of Tax)

: REJECTED :
 : 17245 :
 : I T SCHEDULE :

17245

Claimant
 Address

Examined and submitted for action 19.....

Amount claimed \$.....
 Amount allowed \$..... Committee on Claims
 Amount rejected \$17,764.08

: RECEIVED :
 : APR 25, 1929 :
 : COL. OF INT. REV. :
 : 6th Dist. Cal. :

YEAR ENDED DECEMBER 31, 1917

Net income as adjusted by Commissioner	\$88,727.83
Depreciation of license agreements as fixed by Board's decision	72,511.90
Net taxable income	<hr/> \$16,215.93

Excess profits tax	\$16,215.93, less	
	\$3,000.00 exemption	\$13,215.93 @
	8%, Section 209 of the 1917 Act.	1,057.27
		<hr/>
		\$15,158.66
Taxable at 20%	\$	303.17
Taxable at 40%		606.35
Excess profits tax		1,057.27
		<hr/>
Adjusted Income Tax		\$ 1,966.79
Tax paid as per original return	11,870.68	
Additional tax assessed May, 1920	6,365.00	
Less over-assessment letter #308813, February 24, 1923	151.17	
		<hr/>
Tax paid		18,084.51
		<hr/>
Refund due Petitioner		\$16,117.72
Interest paid on additional Assessment of \$6,213.83 paid May 22, 1923		1,646.36
		<hr/>
TOTAL REFUND DUE TAXPAYER		\$17,764.08"

EXHIBIT Q

"May 22, 1930

"IT:AR:G-4

T G C

"Trumble Refining Company of Arizona,
756 Subway Terminal Building,
Los Angeles, California.

Sirs:

"The following claims for refund of income and profits taxes have been examined and will be rejected for reasons stated below:

Year	Amount
1913	\$ 304.38
1914	348.54
1915	725.11
1916	1,450.24
1917	17,764.08
1919	760.51
1920	1,463.35
1922	2,298.81
1923	2,298.81

"All of the above claims are based upon the contention that you are entitled to an annual deduction from income of \$72,711.90 for depreciation of license agreements in view of the decision rendered in your case for the years 1918, 1920, 1921, 1922 and 1923 by the United States Board of Tax Appeals, Docket Numbers 11763, 17492, 26434 and 32151, 14 Board of Tax Appeals, 348, where-

in you were allowed a March 1, 1913 value of \$850,000.00 on certain license agreements for depreciation purposes resulting in an annual deduction of \$72,511.90 based upon an average life of eleven years, eight months and twenty days as at March 1, 1913.

“Since the Commissioner has not acquiesced in the decision referred to above, your contention cannot be allowed for those years which were not pending before the Board, namely, 1913, 1914, 1915, 1916, 1917 and 1919.

“The claims for the years 1913, 1914, 1915, 1916 and 1919, which you contend were filed in accordance with the provisions of Sections 252 and 284(c) of the Revenue Acts of 1921 and 1926, respectively, are barred by the statute of limitations. The deduction for depreciation of license agreements, if allowable for those years, represents a recovery through income of realized appreciation and as such does not result in any reduction of your invested capital for the years 1917 to 1921, inclusive. Furthermore, your invested capital has not been reduced due to the failure to take such deductions in the prior years. The provisions of Section 252 relating to a decrease in the invested capital for failure to take adequate deductions in previous years, and Section 284(c) which relates to the same matter are, therefore, not applicable. Since no tax was

: REJECTED :
 : 17245 :
 : SCHEDULE :

paid for any of the years 1913, 1914, 1915, 1916 and 1919 within four years of the filing of the claim, the statute of limitations has run and no refund can be made for those years.

“For the years 1920, 1922 and 1923 the deduction for depreciation of license agreements in the amount of \$72,711.90 has been allowed in the adjudication of your tax liability for each of those years in accordance with the decision of the Board. The contentions set forth in your claim for these years having been allowed, no further adjustments are necessary.

“If you do not acquiesce in the proposed action relative to your claims for the years 1913, 1914, 1915, 1916, 1917 and 1919, and desire a hearing in the Unit at Washington, D. C., such hearing will be granted if written request is made therefor within thirty days from the date of this letter.

“If a hearing is not requested, the rejection of all of your claims will be officially scheduled at the expiration of the period indicated.

Respectfully,

DAVID BURNET,

Deputy Commissioner,

By (signed) H. B. ROBINSON,

Head of Division

EXHIBIT R

"TREASURY DEPARTMENT

Washington

Office of

July 25, 1930

Commissioner of Internal Revenue

IT:C:CC-

:	RECEIVED	:
:	AUG 1, 1930	:
:	F.M.T.	E.H.A. :
:	A.J.G.	S.T. :
:	M.J.T.	W.K.W. :
:	Wm. McG.	:

"Trumble Refining Company of Arizona,
756 Subway Terminal Building,
Los Angeles, California.

In re: Refund Claims for Years 1913 to 1917, incl.,
1919, 1920, 1922, 1923.

Amounts: \$304.38, \$348.54, \$725.11,
\$1,450.24, \$17,764.08 \$760.51,
\$1,463.35, \$2,298.81, \$2,298.81.

Sirs:

"Your claims for refund of taxes, above referred to,
were disallowed by the Commissioner on a schedule dated
July 25, 1930.

Respectfully,

DAVID BURNET,
Deputy Commissioner.

By T. F. LANGLEY
Head of Division"

And the following written Stipulation was introduced as Plaintiff's Exhibit 2:

PLAINTIFFS' EXHIBIT 2

“(Title of Court and Cause)

“STIPULATION

“It is hereby stipulated and agreed by and between the parties hereto that the invested capital of the Trumble Refining Company for the year 1917 as computed under the provisions of Section 207 of the Revenue Act of 1917 is the sum of \$67,760.17.

“It is further stipulated that taxes paid by the Trumble Refining Company for the year 1917 to the then Collectors of Internal Revenue have been paid into the Treasury of the United States.

“Dated February 2, 1937.

THOMAS R. DEMPSEY

Thomas R. Dempsey

A. CALDER MACKAY

A. Calder Mackay

Attorneys for Plaintiffs.

PEIRSON M. HALL

Peirson M. Hall

United States Attorney

Asst. U. S. Attorney

EUGENE HARPOLE,

Eugene Harpole,

Special Attorney—Bureau of Internal Revenue.

Attorneys for Defendant.”

(Testimony of E. P. Adams)

E. P. ADAMS,

called as a witness on behalf of the plaintiffs, after being first duly sworn, testifies as follows:

DIRECT EXAMINATION

by Mr. Mackay:

I am a certified public accountant and have been practicing in Los Angeles for seventeen years. In 1910 I was connected with Haskins & Sells and doing accounting work but was not certified at that time. I was then acquainted with Trumble Refining Company and did the first work for them in 1921. I was admitted to practice before the Bureau of Internal Revenue and handling tax matters in 1921. I assisted in handling some tax matters for the Trumble Refining Company about that time involving the year 1917 and subsequent years up to 1926. In 1921 the Trumble Refining Company received a report of an investigation made in August of that year by Revenue Agent Charles F. Degele of the company's books and income tax returns for the years 1917 to 1920, inclusive.

As representative of the Trumble Refining Company I prepared a written protest to this Revenue Agent's report and filed it with the local Internal Revenue Agent—it was filed with the Commissioner of Internal Revenue. This is a copy of the protest I prepared to the Revenue Agent's report for the years 1917 to 1920, inclusive.

Whereupon, said copy was introduced in evidence as Plaintiffs' Exhibit 3:

PLAINTIFFS' EXHIBIT 3

“TRUMBLE REFINING COMPANY OF ARIZONA
916 HIGGINS BUILDING
LOS ANGELES, CALIFORNIA.

“Brief presenting objections of taxpayer to additional assessment of Federal income and profits taxes for the years 1917-1920, inclusive, as recommended in the report of Internal Revenue Agent C. F. Degele, dated August 17, 1921.

Filed on 2/1/22

“TRUMBLE REFINING COMPANY OF ARIZONA
916 HIGGINS BUILDING
LOS ANGELES, CALIFORNIA

OUTLINE OF BRIEF

“In the report of Internal Revenue Agent C. F. Degele, dated August 17, 1921, which was delivered to us on September 26, 1921, the following additional assessments of Federal income and profits taxes are proposed:

1917	\$ 40,289.98
1918	47,796.08
1919	28,046.05
1920	35,651.06
	<hr/>
Total	\$151,783.17

“We have carefully reviewed the adjustments made by the agent, and respectfully enter protest against the additional taxes arising from the following:

- I Computation of the cost of patent rights and royalty contracts for the purposes of invested capital and depreciation in the years 1917-1920, inclusive.
- II Disallowance of part of the salaries paid to officers in the years 1918-1920, inclusive.

“TRUMBLE REFINING COMPANY OF ARIZONA
916 HIGGINS BUILDING
LOS ANGELES, CALIFORNIA

STATEMENT OF FACTS AND CONCLUSIONS

“I COMPUTATION OF THE COST OF PATENT RIGHTS AND DISALLOWANCE OF THE VALUE OF PATENT RIGHTS AND ROYALTY CONTRACTS FOR THE PURPOSES OF INVESTED CAPITAL AND DEPRECIATION IN THE YEARS 1917-1920, INCLUSIVE.

Patent Rights and Contracts

“As stated by the revenue agent, the business of the Trumble Refining Company of Arizona consisted in the granting of licenses to oil companies for the use of patented processes and apparatus for the refining of crude oils. The patent rights held by the company were acquired as follows:

“As of July 13, 1910, Messrs. M. J. Trumble and F. M. Townsend assigned to the company applications for patents covering a process and apparatus known as the ‘Trumble

Evaporator for Petroleum Oils and the Like', and the 'Trumble Oil Separator and Purifier', the consideration for which was fully paid capital stock of the company issued as follows:

	<u>Total</u>	<u>Common Stock</u>	<u>Preferred Stock</u>
Domestic rights	\$1,470,360.00	\$1,151,960.00	\$318,400.00
Foreign rights	1,000,000.00	800,000.00	200,000.00
Total	\$2,470,360.00	\$1,951,960.00	\$518,400.00

"The following patents were subsequently granted on these applications:

<u>U.S. Patent Number</u>	<u>Date</u>	<u>Description</u>
996,736	July 4, 1911	Evaporators for petroleum oils or other liquids.
1,002,474	Sept. 5, 1911	Apparatus for refining petroleums.

"On March 27, 1911, the corporation acquired from M. J. Trumble all rights to certain inventions known as a 'Process of Refining Petroleum' and an 'Apparatus for Refining Petroleum', the consideration for which was 50,000 shares of preferred stock and 320,000 shares of common stock, valued in the sales contract at \$.40 and \$.25 per share, respectively. On January 14, 1913, applications for patent covering these rights were filed, and on August 12, 1913, U. S. Patent #1,070,361 was issued therefor.

“Eighty foreign patents were issued as shown in Exhibit ‘C’.

“Beginning in September, 1910, the company entered into contracts with various oil producers for the use of the process and apparatus during the life of the patents. These contracts provided for royalties based on the oil treated by the patented process and stipulated that the apparatus of the Trumble Refining Company of Arizona be used exclusively during the life of the patents.

“A contract, a copy of which is attached as Exhibit ‘A’, was made on April 14, 1911, with the Esperanza Consolidated Oil Company, now the General Petroleum Corporation. This company agreed to use the Trumble apparatus exclusively in its operations, which were more extensive than those of any other company in this territory. As a result of the successful operation of the plants of the Esperanza Consolidated Oil Company and the Petroleum Development Company (a subsidiary of the Atchison, Topeka, and Santa Fe Railway Company) the value of the patents became widely known, and the Trumble Refining Company was approached by other large oil companies, both foreign and domestic, with proposals for the exclusive rights to the use of the apparatus. Accordingly, at March 1, 1913, the Trumble Refining Company had consummated seventeen license agreements covering plants with an annual capacity in excess of 18,000,000 barrels, and, in addition, had negotiations pending for contracts with the following:

- Royal Dutch Shell Company, rights in Borneo, Sumatra, Roumania and Russia—21,000,000 bbls.
- Union Oil Company of California—10,000,000 bbls.
- Independent Oil Producers Agency—18,250,000 bbls.

“On April 2, 1915, all patent rights in the United States and foreign countries were sold to the Royal Dutch Shell Company, with the exception of those rights appertaining to the contracts in effect at the date of sale.

“These contracts, with a single exception, had been held by the Trumble Refining Company at March 1, 1913. The revenue agent has held that, as a result of this sale, the company retained no value in the patents for income tax purposes.

“This conclusion we hold to be contrary to the law and the facts, and submit, therefore, the following for your further consideration.

Fair Market Value, March 1, 1913

“The Trumble Refining Company was the owner at March 1, 1913, of certain patent rights acquired for the following:

Preferred stock	\$ 538,400.00
Common stock	2,032,110.00
	\$2,570,510.00
Total	\$2,570,510.00
Cash paid for attorneys' fees, etc. to February 28, 1913	27,786.71
	\$2,598,296.71
Total cost of patents	\$2,598,296.71

“These patent rights consisted of U. S. patents Nos. 996,736 and 1,002,474, and six pending United States applications, together with sixty-eight foreign rights for the process and apparatus covered by the United States patents and applications.

“The company was also the owner, through a contract dated April 12, 1911, of the rights to any future improvements and processes relating to the treatment of crude oils that might be perfected by M. J. Trumble.

“The revenue agent shows a total cost to March 1, 1913, as follows:

7/25/10	Preferred stock,	220,000	shares at 25¢	.....	\$ 55,000.00
3/27/11	“ “	50,000	“ “ 40¢	.....	20,000.00
4/ 7/11	“ “	298,400	“ “ 25¢	.....	74,600.00
7/25/10	Common stock,	900,000	“ “ 15¢	.....	135,000.00
3/ 2/11	“ “	1,000	“ “ 15¢	.....	150.00
3/27/11	“ “	320,000	“ “ 25¢	.....	80,000.00
4/ 7/11	“ “	1,051,960	“ “ 15¢	.....	157,794.00
7/25/10—2/28/13	Cash.....				27,786.71
Total.....					\$550,330.71

“In his computations, the revenue agent has ascribed cash values of \$.25 and \$.15, respectively, to the preferred and common stock issued at par to Messrs. Trumble and Townsend on July 25, 1910 and April 7, 1911. These cash values were based on sales of small blocks of stock and were no more indicative of the cash value of the stock issued to Messrs. Trumble and Townsend than was the sale to the Esperanza Consolidated Oil Company, authorized on April 7, 1911, of 200,000 shares of preferred and 800,000 shares of common stock at \$.025 per share. The Esperanza Consolidated Oil Company had agreed to use the Trumble process exclusively, and to further in every possible manner the interests of the Trumble Refining Company. As the former company was one of the largest oil operators in this field, the value of the contract

to the Trumble Refining Company was far in excess of the par value of the capital stock transferred to the Esperanza Consolidated Oil Company, and had proper accounting of the transaction been made on the books, the Esperanza contract would have been entered at not less than the par value of the stock issued, or \$1,000,000.00.

“As previously noted, cash values of \$.40 and \$.25, respectively, were placed on the 50,000 shares of preferred and 320,000 shares of common capital stock issued to Mr. Trumble as of March 27, 1911. These values were accepted by the agent, although he placed cash values of \$.25 and \$.15, respectively, on the 298,400 shares of preferred and the 1,051,960 shares of common stock transferred to Messrs. Trumble and Townsend on April 7, 1911. This stock was issued in full satisfaction of their claim for 1,550,000 shares of common and 390,000 shares of preferred stock under the contract of July 13, 1910, and the transfer was made after the authorization of the contract with the Esperanza Consolidated Oil Company which assured the Trumble Refining Company large royalties and which unquestionably increased the cash value of the stock to par.

“Under these conditions, it is submitted that the revenue agent is in error, and that he should have accepted the adjustment for discount made in 1915 at the time the interests of the preferred and common stockholders were harmonized.

“Under the income tax laws and regulations, the fair market value of the patents as of March 1, 1913, represented capital value returnable over their remaining life. The book value of the patents at that date was \$2,598,-296.71, although this amount is not recognized by the company as the minimum value of these assets.

“The value of the two United States patents was in excess of the book value thereof, both foreign and domestic, as indicated by the following:

“The royalties to be received during the life of the patents, under existing contracts with domestic corporations, reduced to a present worth basis as of March 1, 1913, as shown in Exhibit ‘B’, amounted to \$1,668,294.52. In addition, negotiations pending with the Union Oil Company of California and the Independent Oil Producers Agency indicated that the royalties to be secured under these proposed contracts would in each case equal the combined royalties of the then existing contracts. Thus, there was a reasonable expectation at March 1, 1913, based on contracts in force and under negotiation, of royalties having a present worth valuation as of that date of \$5,004,883.56. This does not take into consideration the value to be ascribed to the patents by reason of the possibility of securing additional valuable contracts through the ownership thereof.

“As a result of negotiations begun in December, 1912, and pending at March 1, 1913, the company made on July 23, 1913, a formal offer to the Royal Dutch Shell Company of \$2,500,000.00 for the sale of the rights to the Trumble process in Borneo, Sumatra, Roumania and Russia.

“The Royal Dutch Shell Company, in the negotiations mentioned in the foregoing, evinced a desire for the rights for all other foreign countries with the exception of Canada and Mexico. The Trumble Refining Company, however, because of other pending negotiations, did not at that time desire to sell these additional foreign rights, and offered in lieu thereof to license the use of the process and apparatus on a royalty basis.

"In view of the facts and conditions as hereinbefore outlined, it is respectfully submitted:

- "1. That the value of \$550,330.71 ascribed to these patents as cost by the internal revenue agent is entirely unreasonable as to the value at the time of acquirement.
- "2. That the value of such patents as of March 1, 1913, on the basis of existing contracts and negotiations then pending, which must be taken into consideration in determining such value, was far in excess of the book value of such patents on that date; i. e., \$2,598,296.71.
- "3. That the minimum value as of March 1, 1913, that could be placed on such patents by a buyer with a full knowledge of the facts was:

Present worth of estimated royalties under existing contracts . . .	\$1,668,294.52
Value of patent rights, based on contracts under negotiation involving royalties of a present worth of \$3,336,589.04 . . .	1,668,294.52

Total	\$3,336,589.04

- "4. That the minimum value that could be placed on such assets as of March 1, 1913, in the light of subsequent events was:

Present worth of royalties received, 1913-1920 and estimated royalties for remaining life of patents, based on 1920 . . .	\$ 791,213.27
Patent rights sold April 2, 1915 . . .	1,000,000.00

Total	\$1,791,213.27

“We contend that the value shown under paragraph #3, \$3,336,589.04, correctly reflects the fair market value of the patent rights as of March 1, 1913, in accordance with the income tax laws and regulations, and that this value is returnable to the company through deductions for depreciation during the life of the patents.

Sale of part of Patent Rights, April 12, 1915

“As a result of the negotiations hereinbefore referred to, the foreign patent rights and part of the domestic patent rights were sold to the Royal Dutch Shell Company for \$1,000,000.00 as of April 2, 1915. A copy of the sales contract is attached hereto as Exhibit ‘C’. As will be noted from this contract, the Trumble Refining Company reserved from the sale all rights in connection with eighteen license contracts, seventeen of which had been held by the company as of March 1, 1913, and which, on the basis of present worth of anticipated royalties, had a fair market value of \$1,668,294.52. These patent rights reserved were valued by the company at approximately \$800,000.00, and, for the purpose of providing a satisfactory method of adjusting the interests of the preferred and common stockholders, it was agreed that the preferred stockholders should be paid the accumulated dividends accrued on their stock from April, 1911, to December 31, 1914, amounting to \$238,780.35, and that the common stock should be reduced from 4,000,000 to 400,000 shares. Our accountants at that time (Price, Waterhouse & Company) advised that the proceeds of the sale be divided in such a manner as to show profits available for dividends, and that the necessary entries be placed upon the books. As \$11,367.24 had been expended subsequent to December 31, 1912, for attorneys’ fees, taxes, etc., on account of patent rights, it was suggested that

\$250,000.00 of the proceeds of the sale be allocated to rights acquired since that date, thus showing a profit of sufficient amount to provide for dividends on the preferred stock. Entries were accordingly made on the books as follows:

Patent rights prior to December 31, 1912 . . .	\$1,785,920.25
Patent rights subsequent to December 31, 1912	11,367.24
Patent rights and royalty contracts	811,821.36
Patents	\$2,609,108.85
To close old patent account.	
Cash	\$1,000,000.00
Patent rights prior to December 31, 1912	\$ 750,000.00
Patent rights subsequent to December 31, 1912	250,000.00
Sale to Mr. W. Meischke-Smith	
Common stock	\$2,880,000.00
Discount on common capital stock . . .	\$1,140,079.75
Patents prior to December 31, 1912 . .	1,035,920.25
Cash	704,000.00
To reduce common stock authorized to 400,000 shares of the par value of \$1.00 and the outstanding to 320,000 shares.	

“As the result of these adjustments, the value of the reserved patent rights was placed at \$811,821.36, as shown in the following:

Reduction of common stock \$2,880,000.00

Less:

Cash \$ 704,000.00

Stock discount 1,140,079.75

1,844,079.75

Balance credited to patents \$1,035,920.25

Balance of patent account \$2,609,108.85

Credits:

Expenditures subse-
quent to December

31, 1912 \$ 11,367.24

Sale 750,000.00

Common stock 1,035,920.25

1,797,287.49

Remainder \$ 811,821.36

“The result of the sale was that the Trumble Refining Company retained patent rights valued at \$1,668,294.52 as of March 1, 1913, on the basis of royalties anticipated under existing contracts, and received \$1,000,000.00 for the remaining domestic and foreign rights and for certain pending applications for patent. That the property sold in no way affected the value of the reserved rights is shown by reference to page 3, paragraph 1, of the president’s report to the stockholders for the year 1915, a copy of which is attached as Exhibit ‘D’.

“As further substantiation of the value of the reserved patent rights, we submit as Exhibits ‘E’ and ‘F’ statements from the Shell Company of California and the General Petroleum Corporation.

“In view of the foregoing facts, it is submitted that the revenue agent was in error in his conclusion that the Trumble Refining Company was not authorized under the income tax laws and the regulations in claiming depreciation of patent rights and royalty contracts in the years 1917 to 1920, inclusive, as Article 167, Regulations 45 states, in part:

“‘In computing a depreciation allowance in the case of a patent or copyright, the capital sum to be replaced is the cost (not already deducted as current expense) of the patent or copyright or its fair market value as of March 1, 1913, if acquired prior thereto. The allowance should be computed by an apportionment of the cost of the patent or copyright or of its fair market value as of March 1, 1913, over the life of the patent or copyright since its grant, or since its acquisition by the taxpayer, or since March 1, 1913, as the case may be. If the patent or copyright was acquired from the Government, its cost consists of the various Government fees, cost of drawings, experimental models, attorney’s fees, etc., actually paid. If a corporation purchased a patent and paid for it in stock or securities, its cost is the fair market value of the stock or securities at the time of the purchase.’

and the principles as set forth in this article are applicable to the year 1917 under T. B. R. 59, Cumulative Bulletin #1, pages 138-139.

“Under this article, the Trumble Refining Company is allowed an annual depreciation deduction based on the fair market value of its patent rights held on March 1,

1913, and still owned, and the life of the patents subsequent to March 1, 1913. In determining the fair market value as of March 1, 1913, of the patent rights owned by the Trumble Refining Company for the taxable years 1917-1920 under review, reference must be made under the income tax laws and the regulations to the following:

1. Cost prior to March 1, 1913.
2. Increase in value to March 1, 1913.

“The cost of all rights in the patents owned as shown by the books as of March 1, 1913, was \$2,598,296.71 (erroneously computed by the revenue agent as \$550,330.71), less the discount adjustment made in April, 1915, of \$1,035,920.25, or \$1,562,376.46. This amount represented the value of the patents as yet undeveloped in 1910 and 1911, plus attorneys’ fees and taxes paid in securing foreign rights for the original patents. At March 1, 1913, the utility value of the patents had become generally known in the United States and in foreign countries, and, by reason thereof, it must be recognized that the value at the date of acquirement cannot be reasonably taken as indicative of the fair market value on March 1, 1913.

“In establishing the increase in value of intangible assets as of a basic date, the income tax regulations prescribe, among other things, reference to earning capacity and to sales of similar property.

“The earning capacity of the patents as of March 1, 1913, as computed by a purchaser would be based on the agreements then in effect and on information relative to future contracts to be secured.

“The fair value of the patent rights at March 1, 1913, on the basis of the present worth as of that date of the

royalties from the seventeen contracts then in force, was \$1,668,294.52. In addition, contracts then under negotiation with the Union Oil Company of California and the Independent Oil Producers Agency indicated a reasonable expectation of royalties to be received therefrom of a present worth value of \$3,336,589.04. Consequently, the value of \$3,336,589.04 placed on the patent rights as of March 1, 1913, is, in the light of known facts, a conservative one.

“In the absence of actual sales, a prospective purchaser would necessarily base his valuation upon information in regard to negotiations for sale of this or similar property.

“In December, 1912, the Royal Dutch Shell Company began negotiations for the purchase of all rights in foreign countries with the exception of Mexico and Canada, and the company anticipated that a sale of the foreign rights would be consummated for an amount greatly in excess of the book value of all patents held at that date, and an investigation of these negotiations by a purchaser would have indicated that such a value was most conservative. On July 23, 1913, the assignment of the rights in four countries, Borneo, Sumatra, Roumanian and Russia, was offered the Royal Dutch Shell Company for \$2,500,000.00, as shown in Exhibit ‘G’.

“All of the facts as set forth above clearly indicate a fair market value (as determined between a willing seller and buyer, each having knowledge of the facts), far in excess of the value of \$2,598,296.71 shown by the books of the company as of March 1, 1913.

“It is, therefore, submitted that the position taken by the company in its books of accounts and tax returns was extremely conservative, and that the exception taken there-to by the revenue agent was unwarranted, first, in that

the invested capital shown by this company resulting from the issue of stock for patent rights is correctly stated, and, secondly, in that the depreciation of patent rights and contracts is based on a minimum fair market value as of March 1, 1913, and is correctly stated under A. R. M. 35, C. B. 2, page 142.

“II DISALLOWANCE OF PART OF THE SALARIES PAID TO OFFICERS IN THE YEARS 1918-1920, INCLUSIVE.

“The revenue agent has disallowed officers’ salaries as follows:

1918	\$5,250.00
1919	9,000.00
1920	9,000.00

“These salaries, it appears from the agent’s report, were disallowed on the following grounds:

- Salaries paid in previous years
- Minutes of meeting of Board of Directors,
July 31, 1916
- Outside interests of officers.

“In connection therewith, please note:

“The stock of the Trumble Refining Company subsequent to April, 1911 had been held approximately as follows:

F. M. Townsend	10%
M. J. Trumble	23%
A. J. Gutzler	10%
General Petroleum Company	50%
John Barneson	3%
Various	4%

“The salaries paid to officers of the company in prior years had not been commensurate in any sense with the services rendered, nor had the officers considered their remuneration in the light of payment for their services. Under the agreement with the Esperanza Consolidated Oil Company (now the General Petroleum Corporation), dated April 12, 1911, that company had acquired one-half of the stock of the company and under the agreement had covenanted to use the Trumble process and apparatus exclusively, and to do everything in its power to further the interest of the Trumble Refining Company. As a result of this agreement, Capt. John Barneson, both as president of the former company and as its representative on the Board of Directors of the Trumble Refining Company and as an individual stockholder of the latter company, had devoted a great deal of his time to the affairs of the Trumble Refining Company and had placed at the disposal of the latter company the services of his staff. Under these conditions, the officers of the Trumble Refining Company considered it entirely unwarrantable to insist on salaries commensurate with the services rendered. With these conditions in mind, and in view of the policy adopted in August, 1915, of paying quarterly dividends, the three officers voluntarily proposed to the General Petroleum Corporation that the salaries be further reduced in 1916, and that Captain Barneson be included on an executive committee and that he receive the same remuneration as the officers. Accordingly, as of July 31, 1916, the proposed change was approved, and a remuneration of \$50.00 per month for each member was adopted.

In June, 1918, the General Petroleum Corporation, through its president, Capt. John Barneson, advised the executive committee that it desired a more equitable arrangement in regard to the services rendered the Trumble

Refining Company by its staff. It was stated that the contemplated improvements in the plants then operating and the construction of the new plant at Lebec under the Mojave license would require more of the time of the staff of the General Petroleum Corporation than was thought proper without compensation, and that in making salary adjustments for the ensuing year, the General Petroleum Corporation considered it only fair that allowance should be made for compensation for services rendered by its staff. The executive committee of the Trumble Refining Company decided that the position of the General Petroleum Corporation was well taken and that salaries should be paid to Capt. John Barneson and L. T. Barneson commensurate with the services rendered. It was further agreed that, while the basis adopted in 1916 was at that time equitable to the majority stockholders, such a basis under the Federal income tax laws was inequitable to the company and that, although the company had been penalized thereby in the year 1917, it was the intent of the tax laws that a reasonable compensation should be paid officers of the company for their services. It was decided, therefore, that \$250.00 per month was the minimum value for the services then being rendered, and the change in compensation was authorized as of June 24, 1918. At the same time the executive committee was increased to five members in order to include L. T. Barneson, who, as the operating official of the General Petroleum Corporation, had been devoting a considerable amount of time to the supervision of improvements to plants and to the operation thereof under license agreements.

"The following shows the nature of the services rendered by each member of the committee subsequent to 1916:

"F. M. Townsend—President

Member of executive committee.

"Mr. Townsend collaborated with M. J. Trumble in connection with the improvements in process and the apparatus covered by patents under which licenses were granted. Mr. Townsend is a recognized patent solicitor and his knowledge of the procedure of the United States Patent Office and of the general patent laws was constantly used by Mr. Trumble in connection with his work of inspecting the operation of the plants under the license agreements and in passing upon the changes proposed in such plants. Mr. Townsend had also been called upon in connection with patent infringement actions pending since 1913, (hearings having been discontinued during the war) for much research work and for attendance in court in 1920 necessitated by an action still pending. He devoted considerable time with M. J. Trumble in outlining experiments and preparing data to combat evidence advanced by defendants in this case.

"A. J. Gutzler—Secretary and member of executive committee.

"Mr. Gutzler devotes practically all of his time to his duties as Secretary of the corporation. He has supervision of accounts and correspondence and reviews the daily reports on operations of plants under license. In addition, he has charge of collections and financing.

“L. T. Barneson—Member of executive committee from June 28, 1918.

“Mr. Barneson, as general manager of the General Petroleum Corporation had, prior to 1918, devoted considerable time to supervision of the plants of the Trumble Refining Company under license by the General Petroleum Corporation, and, under the conditions previously referred to, had received no remuneration from the Trumble Refining Company. In addition to these services, Mr. Barneson, in conjunction with Mr. Trumble during the last half of 1918, designed an improved type of plant for erection under the Mojave License agreement (#17 referred to in Exhibit ‘B’), and during the construction of this plant from April, 1919, to June, 1920, at a cost of \$167,755.26, made inspections of the work with Mr. Trumble and supervised all improvements and changes. Since this plant was placed in operation in June, 1920, Mr. Barneson has inspected it monthly.

“Since 1912, Mr. Barneson has, in collaboration with Mr. Trumble made a study of the various processes and apparatus for treating crude petroleum and has, by reason of his knowledge thereof, rendered valuable service to the Trumble Refining Company. He was enabled to do this to greater advantage after the change of policy in June, 1918, when compensation was authorized by the stockholders for services rendered by the officials of the General Petroleum Corporation.

“Capt. John Barneson—Vice-President and director from April, 1911. Member of executive committee from May, 1915.

“Captain Barneson, through his marked ability and his prestige as president of the General Petroleum Corporation, has had the direction of the financial affairs of the company.

“During the years 1918, 1919, 1920 and 1921, the future operations of the Trumble Refining Company as regards improvements of the existing patent rights and the extension of license agreements by such improvements have been given a great deal of attention by the executive committee, and Captain Barneson has been constantly called into consultation in connection therewith. As one result of these policies, the construction of the plant at Lebec under contract #17 was decided upon in 1918. The preparation of plans was completed in that year and construction was begun by the General Petroleum Corporation in 1919, and completed in June, 1920, at a cost of \$167,755.26. Royalties from this plant amounted to \$8,342.52 in 1919 and \$31,819.44 in 1920. Improvements in the Vernon plant (contract #16) were authorized, and construction was begun in 1920 and completed in May, 1921, at cost of \$239,540.08.

“As previously stated, the officers and staff of the General Petroleum Corporation, in all years prior to 1918, had given their services to the Trumble Refining Company without compensation, but in 1918 an arrangement was effected with the General Petroleum Corporation under which the Trumble Refining Company agreed to pay Captain John Barneson and L. T. Barneson a salary for the services rendered by them.

“M. J. Trumble—Director

Member of executive committee from
May, 1915.

“Mr. Trumble, as the inventor of the process and apparatus owned by the Trumble Refining Company, had full charge of the erection and supervision of the plants operated under the contracts held by the company, and was responsible to the licensees for the efficient operation of such plants. In order that the interests of the Trumble Refining Company might be advanced through increased royalties by the improvement of the process and apparatus, experiments were conducted in the laboratory and at the plant at Vernon.

“The time devoted during the years in question was as follows:

Inspection of plants operated by licenses:

1918-1919—Vernon plant of General Petroleum Corporation, weekly.

1919-1920—Vernon plant, monthly.

Lebec plant in 1919, monthly.

Lebec plant in 1920, tri-monthly.

Laboratory and experimental work:

The work done by Mr. Trumble in his laboratory and at plants of the licensees cannot be accurately determined, as such work is carried on throughout the month, both during the day and at night. As a result of his work, many improvements were developed, of which the following were patented: Process of treating petroleum, Patent #1,260,598, issued March 26, 1918.

Process and apparatus for treating hydrocarbon oils; Patent #1,349,794, issued August 23, 1920.

Process of and apparatus for treating hydrocarbon oils, Patent #1,304,125, issued May 20, 1919.

Process of and apparatus for refining oil; application filed March 1, 1920.

General

“The revenue agent in his report stresses the fact that minutes of the meetings of the Board of Directors show that the principal duty of the officers was to meet once a month and to declare dividends. In view of the fact that this is a close corporation, the adoption of policies and decisions on matters relating to the affairs of the company have always been carried out at informal meetings of the executive committee. These meetings have been held whenever any matter of importance was to be considered, and it is impossible to state the exact number of such informal meetings held in any month or year. The offices of the General Petroleum Corporation and the Trumble Refining Company are located in the same building and whenever matters requiring the attention of the full committee arise, Messrs. John and L. T. Barneson are called to meet with the other members of the committee in the offices of the Trumble Refining Company, and the necessary procedure is agreed upon at that time or else deferred to a subsequent meeting.

“Under these conditions, it is impossible to state with any degree of accuracy the amount of time devoted by the officers or the members of the executive committee. The character of specific services rendered and the general

duties in connection with the direction of the affairs, as previously referred to, are such as to make the element of time an unreasonable measure of value, and attention is respectfully directed to the fact that services of the character rendered could not have been secured through the engagement of outside attorneys and engineers for many times the remuneration paid by this company to its officers, and it is, therefore, respectfully urged that this company be not penalized through the disallowance as deductions of any part of the payments made to its officers.

“TRUMBLE REFINING COMPANY OF ARIZONA
916 HIGGINS BUILDING
LOS ANGELES, CALIFORNIA

LIST OF STATEMENTS ATTACHED

EXHIBIT

‘A’ — COPY OF CONTRACT WITH THE ES-
PERANZA CONSOLIDATED OIL COM-
PANY, DATED APRIL 14, 1911.

‘B’ — CONTRACTS HELD AS OF MARCH 1,
1913, AND PRESENT WORTH OF ROY-
ALTIES AS OF THAT DATE.

‘C’ — COPY OF SALES CONTRACT WITH
THE ROYAL DUTCH SHELL COM-
PANY DATED APRIL 2, 1915.

‘D’ — COPY OF EXTRACT FROM THE PRESI-
DENT’S REPORT FOR THE YEAR 1915.

'E' — STATEMENT OF THE SHELL COMPANY OF CALIFORNIA IN REGARD TO RESERVED PATENT RIGHTS.

'F' — STATEMENT OF THE GENERAL PETROLEUM CORPORATION IN REGARD TO RESERVED PATENT RIGHTS.

'G' — OFFER TO THE ROYAL DUTCH SHELL COMPANY OF RIGHTS IN BORNEO, SUMATRA, ROUMANIA, AND RUSSIA, DATED JULY 23, 1913.

'H' — COMPUTATION OF TAXES.

JURAT.

EXHIBIT 'A'

"THIS AGREEMENT, made and entered into this 12th day of April, A. D. 1911, by and between TRUMBLE REFINING COMPANY, a corporation incorporated, organized and existing under the laws of the Territory of Arizona (hereinafter called the 'Refining Company'), the party of the first part, MILON J. TRUMBLE, FRANCIS M. TOWNSEND, A. J. GUTZLER and JOHN H. RANDOLPH, all of the County of Los Angeles, State of California (hereinafter called the 'Stockholders'), the parties of the second part, the said MILON J. TRUMBLE, of the said County of Los Angeles, State of California (hereinafter called the 'Inventor'), the party of the third part, and ESPERANZA CONSOLIDATED OIL COMPANY, a corporation incorporated, organized and existing under the laws of the State of California (hereinafter called the 'Oil Company'), the party of the fourth part,

WITNESSETH

“WHEREAS, the Refining Company has an authorized capital stock of five million (5,000,000) shares, of the par value of one dollar (\$1.00) per share, divided into two (2) classes, the one class being preferred capital stock and consisting of one million (1,000,000) shares, and the other class being common capital stock, and consisting of four million (4,000,000) shares; and

“WHEREAS, according to the representation made by the Refining Company and the Stockholders to the Oil Company, there are six hundred thousand (600,000) shares of the said preferred capital stock and two million four hundred thousand (2,400,000) shares of the said common capital stock issued and outstanding, and there are unissued four hundred thousand (400,000) shares of the said preferred capital stock and one million six hundred thousand (1,600,000) shares of the said common capital stock; and

“WHEREAS, according to the representations made by the Refining Company, the Stockholders and the Inventor to the Oil Company, the Inventor has invented valuable machines, apparatus and processes for the evaporation and refining of petroleum and other oils and liquids and gas, and patents for the same have been issued, and applications for other patents for the same are now pending, and the Inventor has assigned the same to the Refining Company, and contemplates and intends to assign to the Company further improvements and processes, in any manner relating to the same, which may from time to time hereafter be invented by him; and

“WHEREAS, it is deemed by the Refining Company to be for the advantage of the Refining Company that

the Oil Company shall become a stockholder in the Refining Company, relying on the representations made to the Refining Company by the Oil Company that the Oil Company will aid and assist the Refining Company in pushing the business of the Refining Company, and will do everything in its power to further the interests of the Refining Company; and

“WHEREAS, as a further consideration for the sale of the stock agreed to be sold to the Oil Company by the Stockholders at the price and at the times hereinafter provided, it is deemed by the Stockholders to be for the advantage of the Stockholders that the Oil Company shall become a stockholder in the Refining Company, relying on the representations made to the Stockholders by the Oil Company that the Oil Company will aid and assist the Refining Company in pushing the business of the Refining Company and will do everything in its power to further the interests of the Refining Company; and

“WHEREAS, the Oil Company, relying upon the representations made to it, as hereinabove stated, deems it to be for its advantage to become interested in the Refining Company as a stockholder thereof;

“NOW, THEREFORE, in consideration of the respective representations aforesaid, and of the sale to, and the purchase by, the Oil Company of certain shares of the said capital stock, as hereinafter provided, the respective parties hereby covenant and agree to do and perform the things on its, their or his part to be done and performed as follows:

“1. The Refining Company hereby sells to the Oil Company, and the Oil Company hereby purchases from the Refining Company, two hundred thousand (200,000)

of the unissued shares of the said preferred capital stock, fully paid up, and eight hundred thousand (800,000) of the unissued shares of the said common capital stock, fully paid up, for the price of twenty-five thousand dollars (\$25,000.00), in gold coin of the United States, to be paid by the Oil Company, as hereinafter provided, and on the conditions hereinafter provided:

“(a) The said sum of twenty-five thousand dollars (\$25,000.00) shall be deposited by the Oil Company with the National Bank of California of Los Angeles, to the credit of the Refining Company, in such installments, as and when the same shall be needed by the Refining Company, for the purpose hereinafter provided, and on demand made therefor by the Refining Company on the Oil Company;

“(b) The purpose for which the said sum of twenty-five thousand dollars (\$25,000.00) shall be used by the Refining Company shall be, so far as the same shall be necessary therefor, to obtain patents for the said inventions and processes, in this country and in foreign countries; it being understood, however, that such portion of the said sum as shall not be necessary for the purpose aforesaid, shall be thereafter deposited by the Oil Company, with the said Bank, to the credit of the Refining Company, on demand made by the Refining Company therefor on the Oil Company, for use by the Refining Company in the conduct of the business of the Refining Company; and it being further understood that the Oil Company shall have the right, without any demand being made therefor upon the Oil Company, to deposit, with the said Bank, to the credit of the Refining Company, all or any portion of the said sum;

“(c) Immediately upon the execution of this agreement the Refining Company shall deposit with the said Bank certificates for two hundred thousand (200,000) fully paid up shares of the said preferred capital stock, and certificates for eight hundred thousand (800,000) fully paid up shares of the said common capital stock, with instructions to the said Bank to deliver to the Oil Company certificates for eight (8) shares of the said preferred capital stock, and certificates for thirty-two (32) shares of the said common capital stock, for every dollar deposited by the Oil Company, with the said Bank, to the credit of the Refining Company, when and as the same shall be so deposited, and if the Oil Company shall fail to deposit any part of the said sum of twenty-five thousand dollars (\$25,000.00) in the said Bank, to the credit of the Refining Company, to return to the Refining Company all of the certificates for the said two hundred thousand (200,000) shares of preferred capital stock and all the certificates for the eight hundred thousand (800,000) shares of the common capital stock, so deposited by the Refining Company, which shall not have been theretofore delivered by the Bank to the Oil Company, on the expiration of five (5) days after demand therefor made in writing by the Refining Company on the Oil Company, at the office of the Oil Company, in the Alaska Commercial Building, in the City and County of San Francisco, State of California.

“2. The Stockholders hereby sell to the Oil Company, and the Oil Company hereby purchases from the Stockholders, two hundred thousand (200,000) of their fully paid up issued shares of the said preferred capital stock, and eight hundred thousand (800,000) of their fully paid up issued shares of the said common capital stock, for the

price of fifty thousand dollars (\$50,000.00) in gold coin of the United States, to be paid by the Company, as hereinafter provided, and on the conditions hereinafter provided:

“(a) The said sum of fifty thousand dollars (\$50,000.00) shall be deposited by the Oil Company, with the said Bank, to the credit of the Stockholders, in equal monthly installments of ten thousand (\$10,000.00), beginning on or before the first day of each month, beginning on the 1st day of May, A. D. 1911, until the said sum shall have been fully deposited, together with interest on all deferred payments, in like gold coin, at the rate of six (6) per cent, per annum, until paid.

“(b) Immediately upon the execution of this agreement the Stockholders shall deposit with the said Bank certificates for two hundred thousand (200,000) fully paid up shares of the said preferred capital stock and eight hundred thousand (800,000) fully paid up shares of the said common capital stock, with instructions to the said Bank to deliver to the Oil Company certificates for four (4) shares of the said preferred capital stock and certificates for sixteen (16) shares of the said common capital stock for every dollar deposited by the Oil Company with the said Bank to the credit of the Stockholders, when and as the same shall be so deposited, and if the Oil Company shall fail to deposit any part of the said sum of fifty thousand dollars (\$50,000.00) in the said Bank, to the credit of the Stockholders, on the expiration of five (5) days after demand therefor made in writing by the Stockholders on the Oil Company, at the said office of the Oil Company, at any time after the first day of the month on which the same should be so deposited by the Oil Company, to return to the Stockholders all of the

certificates for the said two hundred thousand (200,000) shares of preferred capital stock, and eight hundred thousand (800,000) shares of common capital stock, so deposited by the Stockholders, which shall not have been theretofore delivered by the Bank to the Oil Company, whereupon the obligations of the Oil Company shall be at an end.

“3. The remaining two hundred thousand (200,000) unissued shares of the said preferred capital stock, and the remaining eight hundred thousand (800,000) unissued shares of the said common capital stock shall not be sold, or otherwise disposed of, by the Refining Company, without the consent in writing of the Oil Company, and as security for the performance of this obligation by the Refining Company, the Refining Company shall issue a certificate for the said two hundred thousand (200,000) unissued shares of the said preferred capital stock, and a certificate for the said eight hundred thousand (800,000) unissued shares of the said common capital stock, to Charles W. Slack, as Trustee, who shall hold the same, but without any rights of a stockholder in the Refining Company by reason thereof, subject to the joint demand of the Refining Company and of the Oil Company.

“4. The Refining Company shall take such steps as the attorney for the Oil Company shall deem to be necessary, for the purpose of perfecting the organization of the Refining Company, and for the purpose of adopting such a code of by-laws, in place of the existing code of by-laws, as the said attorney shall deem to be necessary, and shall also cause to be prepared such new forms of certificates for shares of the preferred capital stock, and for shares of the said common capital stock, as the said attor-

ney shall deem to be necessary, in place of the existing certificates, all for the benefit of all persons concerned.

“5. The Refining Company shall prosecute with all reasonable diligence to the patents therefor, all pending applications for patents for the said inventions and processes.

“6. The Inventor shall assign to the Refining Company all patents for future improvements and processes, in any manner relating to the above mentioned inventions and processes, and all patents therefor shall belong to, and by the property of, the Refining Company.

“7. The Esperanza Company shall be entitled to use the said inventions and processes in the operation and conduct of its business under no more favorable terms and conditions than a like use shall be permitted by the Refining Company to other persons and corporations under similar conditions.

“8. The Stockholders and the Oil Company shall appoint, and they do hereby severally appoint, Charles W. Slack their and each of their true and lawful attorney, with power to vote at all meetings of stockholders of the Refining Company, held for the purpose of electing directors at any time during the period of three (3) years from and after the date hereof. For the purpose of insuring the carrying out of this provision, the Stockholders shall deposit with the said Charles W. Slack, within the period of five (5) days from and after the date hereof, all their certificates of stock issued by the Refining Company, and the Oil Company shall deposit with the said Charles W. Slack all the certificates of stock of the Refining Company which shall have been delivered to the

Oil Company, under the provisions of this agreement, forthwith upon delivery of the same to the Oil Company. The said Charles W. Slack shall vote the said stock for such directors as shall have been designated prior to each meeting of the stockholders of the Refining Company, held for the purpose of electing directors, by a majority of six (6) persons, three (3) of whom shall be selected by the Stockholders and three (3) of whom shall be selected by the Oil Company. The power hereby conferred upon the said Charles W. Slack shall be deemed a power coupled with an interest, and shall not be revocable during the said period of three (3) years, except by a writing declaring such revocation, executed by the Stockholders and by the Oil Company, holding at least two-thirds ($2/3$) of the stock evidenced by the certificates deposited with the said Charles W. Slack. At the expiration of the said period of three (3) years or on the prior revocation of the power herein conferred, as hereinabove provided, the said Charles W. Slack shall redeliver to the respective certificates deposited by them hereunder. Any other stockholder of the Refining Company may deposit his certificates of stock issued by the Refining Company with the said Charles W. Slack, and the same shall be held by the said Charles W. Slack subject to this provision, as though such stockholder had been named as a party to the same.

“9. If the owner of any shares of stock of the Refining Company, the certificates for which shall have been deposited under the preceding paragraph 8 of this agree-

ment, shall desire to sell any of the said shares evidenced by the certificates so deposited, such owner shall first offer such shares for sale to the Refining Company, and if the Refining Company shall not desire to purchase the same, such owner shall next offer such shares for sale to the other said owners, and if the latter shall not desire to purchase the same, such owner may then sell such shares to third persons, but in no event shall a sale to third persons be made at a less price than the price at which the said shares shall have been offered to the Refining Company, or to the other said owners. All offers of sale under this provision to the Oil Company may be addressed to the said Charles W. Slack, at his office in the Alaska Commercial Building, in the City and County of San Francisco, State of California.

“IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in six (6) counterparts, each of which shall be deemed an original, the day and year first hereinabove written.

TRUMBLE REFINING COMPANY

By F. M. TOWNSEND, President;

By A. J. GUTZLER, Asst. Secy.

M. J. TRUMBLE (SEAL)

F. M. TOWNSEND (SEAL)

A. J. GUTZLER (SEAL)

ESPERANZA CONSOLIDATED OIL
COMPANY

By E. J. deSABLA, President

By J. MATHISON, Assistant Secy.

"EXHIBIT B

"TRUMBLE REFINING COMPANY OF ARIZONA

CONTRACTS HELD AS OF MARCH 1, 1913, AND PRESENT WORTH OF ROYALTIES AS OF THAT DATE

	CONTRACT NUMBER.....																
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Licensee	Petroleum Development Company	Coalinga National Oil Company	Jno. R. Ott Contracting Company	General Petroleum Corporation	Recovery Oil Company	General Petroleum Corporation	General Petroleum Corporation	General Petroleum Corporation	General Petroleum Corporation	Santa Maria Oil Fields of Cal.	Warner Quinlan As-phalturn Co.	Pacific Crude Oil Company	American Union Oil Refining Co.	Santa Maria Oil Fields of Cal.	General Petroleum Corporation	General Petroleum Corporation	General Petroleum Corporation
Date of license.....	Sep. 27, 1910	July 10, 1911	Feb. 15, 1912	Apr. 12, 1911	Mar 18 1912	Apr. 12, 1911	Apr. 12, 1911	Apr. 12, 1911	Apr. 12 1911	Sep. 28, 1912	Oct. 26, 1912	Nov. 30, 1912	Jan. 8, 1913	Feb. 8, 1913	Apr. 12, 1911	Apr. 12, 1911	Apr. 12, 1911
Patents licensed.....	996,736	996,736	996,736 1,002,474	996,736	996,736	996,736	996,736	996,736	996,736 1,002,474	996,736	996,736 1,002,474	996,736	996,736 1,002,474	996,736 1,002,474	996,736 1,002,474	996,736 1,002,474	996,736 1,002,474
Plant location.....	Fellows	Coalinga	Los Angeles Nov. 19	Sibyl Lease	Fellows	Nevada-Mid-way	Olinda-Delaware Union	Brea Canyon	Kerto	Cat Canyon	Warner, N. J.	Fellows	Tulare	Cat Canyon	Kerto	Vernon	Mojave
Plant erected.....	Jan. 1911	July, 1911	Nov. 1911	July, 1912	July, 1912	July, 1912	Sept., 1912	Sept. 1912	Aug. 1912	Dec. 1912	Nov. 1912 June 1913	Dec. 1912 Mar. 1913	Feb. 1913		Jan. 29, 1913	May 15, 1913	
Plant capacity in bbls. per annum.....	3,285,000	365,000	365,000	182,500	365,000	365,000	273,750	273,750	365,000	730,000	730,000	1,825,000	365,000	Extension #10	Extension #9	7,300,000	3,650,000
Estimated oil run per annum.....	2,463,750		54,750	50,000		120,000	136,875		182,500	365,000	365,000	941,250	182,500			5,475,000	2,737,500
Royalty per barrel.....	1-½¢	2¢	5¢	1¢		1¢	1¢		1-½¢	2¢	1-3/4¢	1-1/4¢	2-½¢			1-½¢	1-½¢
Estimated royalty per annum.....	\$ 36,956.25		\$ 2,737.50	\$ 500.00		\$ 1,200.00	\$ 1,368.75		\$ 2,737.50	\$ 7,300.00	\$ 6,387.50	\$ 11,765.63	\$ 4,562.50			\$ 82,125.00	\$ 41,062.50
Life of license, in years, from March 1, 1913	15-1/3	15-1/3	15-½	10	12	5	15-1/3	15-1/3	15-½	15-1/3	15-½	15-1/3	15-½			15-½	15-½
PRESENT WORTH OF ROYALTIES ON 8% BASIS:																	
1913.....	\$ 34,646.48		\$ 2,566.41	\$ 468.75		\$ 1,125.00	\$ 1,283.20		\$ 1,710.94	\$ 6,843.75	\$ 2,994.14	\$ 8,272.90	\$ 2,138.67			\$ 38,496.09	\$ 19,248.05
1914.....	32,080.08		2,376.30	434.03		1,041.67	1,188.15		1,584.20	6,336.81	5,544.70	10,213.22	3,960.50			71,289.06	35,644.53
1915.....	29,703.77		2,200.28	401.88		964.51	1,100.14		1,466.85	5,867.41	5,133.99	9,456.69	3,667.13			66,008.39	33,004.19
1916.....	27,503.49		2,037.30	372.11		893.06	1,018.65		1,358.20	5,432.79	4,753.69	8,756.19	3,395.49			61,118.87	30,559.44
1917.....	25,466.19		1,886.38	344.55		697.70	943.19		1,257.59	5,030.36	4,401.56	8,107.58	3,143.97			56,591.54	28,295.77
1918.....	23,579.81		1,746.65	319.02			873.33		1,164.43	4,657.74	4,075.52	7,507.02	2,911.09			52,399.57	26,199.78
1919.....	21,833.15		1,617.27	295.39			808.64		1,078.18	4,312.72	3,773.63	6,950.94	2,695.45			48,518.11	24,259.06
1920.....	20,215.88		1,497.47	273.51			748.74		998.31	3,993.26	3,494.10	6,436.06	2,495.79			44,924.17	22,462.09
1921.....	18,718.40		1,386.55	253.25			693.27		924.37	3,697.46	3,235.28	5,959.31	2,310.91			41,596.45	20,798.23
1922.....	17,331.85		1,283.84				641.92		855.89	3,423.58	2,995.63	5,517.88	2,139.73			38,515.23	19,257.61
1923.....	16,048.01		1,188.74				594.37		792.49	3,169.98	2,773.73	5,109.15	1,981.24			35,662.25	17,831.12
1924.....	14,859.27		1,100.69				550.34		733.79	2,935.16	2,568.27	4,730.69	1,834.48			33,020.60	16,510.30
1925.....	13,758.58		1,019.15				509.58		679.44	2,117.74	2,378.03	4,380.27	1,698.59			30,574.62	15,287.31
1926.....	12,739.42		943.66				471.83		629.11	2,516.43	2,201.88	4,055.80	1,572.77			28,309.83	14,154.91
1927.....	11,795.76		873.76				436.88		582.51	2,330.03	2,038.77	3,755.37	1,456.27			26,212.80	13,106.40
1928.....	3,829.79		420.08				141.84		280.05	756.50	980.18	1,219.28	700.13			12,602.31	6,301.15
TOTAL.....	\$1,668,294.52	\$324,109.93	\$24,144.53	\$ 3,162.49		\$ 4,721.94	\$12,004.07		\$16,096.35	\$63,421.72	\$53,343.10	\$100,428.35	\$38,102.21			\$685,839.89	\$342,919.94



"EXHIBIT C

"THIS AGREEMENT, made and entered into this 2nd day of APRIL, A. D. 1915, by and between TRUMBLE REFINING COMPANY, a corporation organized and existing under the Laws of the State of Arizona, the party of the first part, and W. MEISCHKE SMITH, of the City and County of San Francisco, State of California, party of the second part.

WITNESSETH:

"WHEREAS, the first party is the owner of certain Letters Patents of the United States, and Letters Patents of foreign countries, and is also the owner of inventions of MILON J. TRUMBLE, upon which inventions applications for patents have been made in the United States of America, as set forth more particularly in the schedule marked 'A' hereto annexed, to which specific reference is hereby made and by such reference is hereby made a part hereof, and;

"WHEREAS, by the terms of that certain agreement dated April 12, 1911, MILON J. TRUMBLE has agreed to assign and deliver to the first party the full right, title and interest in and to any inventions, and Letters Patents that may issue thereon, relating to the Treating or Refining of Oils, and;

"WHEREAS, the first party has entered into certain license agreements relating to the operation of certain apparatus for the Treating or Refining of Oil, which said agreements are set forth more particularly in schedule 'B' attached hereto, and by reference hereby made a part hereof, and;

“WHEREAS, the second party is desirous of acquiring all rights held by the first party under those certain patents and inventions set forth in schedule ‘A’ hereinabove referred to, together with all future inventions and Letters Patents having to do with the Treating or Refining of Oil which may hereafter become the property of the first party as assignee of MILON J. TRUMBLE, exclusive of any and all rights held by the first party under those certain license agreements set out in schedule ‘B’ hereinabove referred to.

“NOW, THEREFORE, in consideration of the respective representations aforesaid, and of the sale to, and purchase by, the second party of certain property as hereinafter provided, and respective parties hereby covenant and agree to do and perform the things on its, their, or his, part to be done and performed, as follows:

“1. The first party hereby sells to the second party, and the second party hereby purchases, all of that certain property set forth in schedule ‘A’ hereinabove referred to, excepting any and all the rights now held by the first party in and by virtue of those certain agreements set forth in schedule ‘B’, which rights are hereby expressly reserved in the first party for its sole and exclusive benefit. The said party of the first part does by these presents warrant that the title hereby agreed to be conveyed, and which may hereafter be conveyed, in pursuance of this agreement, to any of the said patents and inventions set forth in schedule ‘A’ hereof is good and sufficient and that the instruments of conveyance thereof herein provided to be executed from the party of the first part to the party of the second part shall pass, and be sufficient to pass, a free and unincumbered title to each and all of the said invention and patents, and this warranty shall be

a continuing warranty not satisfied or discharged by the acceptance of any particular assignments.

“2. The second party agrees to purchase the said property set forth in Schedule ‘A’ hereinabove referred to, excepting those rights in schedule ‘B’ hereinabove referred to, and agrees to pay to the party of the first part for such property the sum of ONE MILLION DOLLARS (\$1,000,000.00), said sum of ONE MILLION DOLLARS (\$1,000,000.00) to be paid as follows: The sum of NINE HUNDRED THOUSAND DOLLARS (\$900,000.00) upon the execution of these presents, the receipt of which is hereby acknowledged, and the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) upon the execution and delivery by the party of the first party to the party of the second part of the instruments, transfers and conveyances necessary and proper to transfer a good and sufficient title to said property described in said schedule ‘A’ to the party of the second part.

“3. The first party further agrees to execute and deliver to the second party at his order any and all instruments necessary to vest in the second party, or in any person, firm, or corporation, designated by the second party, full and complete title in and to the said property hereby transferred, such designation of transferee however to be made by the second party within a period of Sixty (60) days from and after the date of this agreement. The party of the first part hereby covenants and agrees that at any future time to execute any further or additional transfers, deeds, assignments, or other instruments which may be found necessary or proper to complete or effectuate the transfer of the property herein contemplated to be transferred from the party of the first

part to the party of the second part, or which shall be required by any rule or regulation of any foreign country or the United States, notwithstanding any previous attempt to transfer such interest; all transfers herein contemplated shall be prepared, executed and delivered at the expense of the party of the first part.

"4. The first party hereby assigns and transfers to the second party all rights held by it under and by virtue of those certain license agreements entered into by the first party, and more particularly designated as follows:

"Contract dated May 5, 1914, between Trumble Refining Company and American Gasoline Company;

"Contract dated July 28, 1914, between Trumble Refining Company and Anglo Saxon Petroleum Company, Limited, and;

"Contract dated September 22nd, 1914, between Trumble Refining Company and Anglo Saxon Petroleum Company, Limited.

"5. The first party further agrees to transfer any and all Letters Patents or inventions relating to the Treating or Refining of Oil which said first party may hereafter acquire from Milon J. Trumble, and hereby agrees to set over the same to the second party, or to any person, firm or corporation, designated by the second party, it being understood and agreed that any expense necessarily incurred by the first party, or by MILON J. TRUMBLE, in perfecting said invention or inventions, shall be paid by the second party to the first party at the time of making such transfer or transfers. That the cost and expenses above referred to shall not include any charge for the personal time of the said MILON J. TRUMBLE, or any officer of the party of the first part herein.

“6. The party of the second part does hereby expressly covenant, agree and warrant that he will not in any manner interfere with the free exercise and enjoyment by the party of the first part of the licenses or agreements referred to in schedule ‘B’, and that he will not in any manner interfere with the free exercise and enjoyment of such licenses and agreements by the persons to whom they have been executed by the party of the first part; and that he will not acquire or attempt to acquire the rights or privileges extended to said persons by said agreements; that he will not execute to such persons any license or privilege under the patents or patent rights herein agreed to be transferred to him, or any of the privileges granted to such persons by the respective agreements under which they hold as the same are provided in said schedule ‘B’, and that he will not acquire any of the property leased or conceded to such parties under such schedule ‘B’, except subject to the royalties now imposed by the licenses referred to in schedule ‘B’.

“7. It is further understood and agreed that the second party may have access to the books and records of the first party at any time for the purpose of ascertaining the status of the first party and its licenses, as set forth in schedule ‘B’ hereto attached, with a view to ascertaining whether the said licensees are exceeding the rights given under the respective licenses.

“8. The said party of the first part does hereby covenant and agree by and with the party of the second part that it will not grant to any of the persons who are parties to the licenses or agreements referred to in schedule ‘B’ hereof any right or privilege by way or enlargement or extension of said agreements in schedule ‘B’ hereof, whereby said persons shall or may be entitled to exercise

said privileges conferred upon them by any of said agreements at any other place, or to any greater extent, or in any other manner than is now fixed and granted to said parties by said agreements, and will not consent to a transfer of any of said agreements to any other or different parties, except where said transfer is given as a matter of right by the terms of such agreements and where the same could be enforced without the consent of the party of the first part.

“9. It is further understood and agreed that the second party has the right and privilege to call on the first party for, and the first party agrees to produce, any documents in the possession of the first party that may aid or assist the second party in establishing any title or right hereby transferred to the second party.

“IN WITNESS WHEREOF, the first party has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed, and attested by its Secretary, and the second party has hereunto set his hand and seal, the day and year in this agreement first above written.

TRUMBLE REFINING COMPANY

By F. M. TOWNSEND, President.

W. MEISCHKE - SMITH (SEAL)

ATTEST:

Second Party.

FRANK L. A. GRAHAM,

Secretary.

IN PRESENCE OF:

P. H. SHELTON

ISABEL HALL

"SCHEDULE 'A'

UNITED STATES PATENTS ISSUED

No. 996,736, for EVAPORATORS FOR PETROLEUM OILS OR OTHER LIQUIDS, issued July 4, 1911.

No. 1,002,474, for APPARATUS FOR REFINING PETROLEUMS, issued September 5, 1911.

No. 1,070,361, for PROCESSES OF REFINING PETROLEUM OR SIMILAR OILS AND APPARATUS FOR CARRYING ON THESE PROCESSES, issued August 12, 1913.

UNITED STATES PATENTS PENDING

- (1) PROCESSES FOR REFINING PETROLEUM, filed September 27, 1909, Serial No. 519,883.
- (2) PROCESS OF TREATING PETROLEUM, filed October 10, 1910, Serial No. 586,382.
- (3) PROCESS AND APPARATUS FOR MAKING ASPHALTUM, filed September 16, 1912, Serial No. 720,687.
- (4) APPARATUS FOR HEATING PETROLEUM OILS, filed September 16, 1912, Serial No. 720,688.
- (5) PROCESS AND APPARATUS FOR DISTILLING AND REFINING OILS, filed September 16, 1912, Serial No. 720,689.

- (6) APPARATUS FOR DISTILLING AND REFINING OILS, filed December 1, 1913, Serial No. 804,124. (Divisional application.)
- (7) DOUBLE EVAPORATOR AND PROCESS OF TREATING PETROLEUM OILS, filed December 5, 1914, Serial No. 875,737.

Converter

Cases:

- (8) PROCESS OF PRODUCING LIGHT HYDRO-CARBON OIL FROM A HEAVIER SERIES OF THE SAME, filed March 13, 1915, Serial No. 14,102.
- (9) APPARATUS FOR PRODUCING LIGHT HYDROCARBON OIL FROM A HEAVIER SERIES OF THE SAME, executed March 22, 1915.
- (10) PROCESS AND APPARATUS FOR REDUCING THE VISCOSITY OF HEAVY HYDRO-CARBONS, executed March 13, 1915.
- (11) PROCESS AND APPARATUS FOR REDUCING THE VISCOSITY OF PETROLEUM RESIDUES, executed March 22, 1915.

ISSUED FOREIGN PATENTS

EVAPORATOR:

<u>COUNTRY</u>	<u>NUMBER</u>	<u>DATE</u>
Ceylon	1206	July 26, 1911
India	397	Oct. 20, 1911
Mysore	1	Mar. 23, 1912
Perak	10	May 24, 1911
Straits Settlements	450	Aug. 9, 1911
Jamaica	....	July 25, 1911
Grenada	1	July 10, 1911
Newfoundland	128	Dec. 23, 1911
Trinidad	4	Aug. 31, 1911
Orange River Colony	967	July 8, 1911
Transvaal	383	July 8, 1911
Tunis	1159	June 26, 1911
Cape Colony	4958	July 15, 1911
Liberia	110703	July 21, 1911
Mauritius	....	Nov. 3, 1911
Natal	141	July 10, 1911
Rhodesia	749	July 17, 1911
Zanzibar	1	Jan. 15, 1912
Switzerland	57547	June 16, 1911
Belgium	236771	June 17, 1911
France	431142	June 16, 1911
Luxemburg	9071	June 20, 1911
Hungary	56100	June 21, 1911
Norway	22426	June 17, 1911

Portugal	7843	Oct. 13, 1911
Roumania	2273	June 9, 1911
Spain	50810	July 31, 1911
Turkey	1946	July 1, 1911
Denmark	16647	Oct. 30, 1912
Finland	4711	Jan. 18, 1912
Italy Reg. Gen. 86/118263		
Reg. Att. 360/158		June 30, 1911
Japan	21962	Apr. 6, 1912
Australia	1788	July 12, 1911
New Zealand	29868	July 14, 1911
Fiji Islands No. registered in Book 1, Folio 48		July 10, 1912
Belgian Congo	291	June 20, 1911
Argentine Republic	8966	Feb. 12, 1912
Bolivia	....	July 2, 1912
Ecuador	42	Aug. 21, 1911
Mexico (Process)	11869	June 14, 1911
Mexico (Apparatus)	11870	June 14, 1911
Nicaragua	31	Aug. 22, 1911
Uruguay	573	Nov. 23, 1912
Venezuela	281	Nov. 30, 1911
Chili	2550	Oct. 2, 1911
U. S. of Columbia	1095	Nov. 11, 1911
Brazil	6821	Nov. 29, 1911
Peru	392	Mar. 29, 1912
Canada	144252	Nov. 26, 1912

Gambia	....	Apr. 2, 1912
Northern Nigeria	23	Mar. 10, 1913
Southern Nigeria	....	July 11, 1911
Russia	25092	Sept. 30, 1913

(Russian Style)

<u>COUNTRY</u>	<u>NUMBER</u>	<u>DATE</u>
Cuba	1933	Feb. 3, 1914
Honduras	8966	Nov. 19, 1913
Great Britain	14161	June 14, 1911
Pahang	64	May 24, 1911
Paraguay	....	Jan. 18, 1913
Egypt	135	May 5, 1913
Sweden	35315	June 13, 1911
Germany	261641	June 17, 1911
Austria	61361	May 1, 1913
St. Helena	....	June 13, 1913
Seychelles Islands	....	Jan. 13, 1913
Gold Coast Colony	100	Jan. 5, 1912
St. Lucia	....	Aug. 21, 1911
St. Vincent	1	July 10, 1911
Leeward Islands	3	July 25, 1911
Falkland Islands	1020	June 9, 1913
Negri Sembilan	1	May 24, 1911
Hong Kong	8	July 21, 1913
Selangor	72	May 7, 1912
British North Borneo	63	Aug. 24, 1911

ALLOWED, BUT NOT RECEIVED

Costa Rica

Guatemala

San Salvador

FOREIGN PATENTS ISSUEDEVAPORATING APPARATUS FOR PETROLEUM
OILS AND THE LIKE

	<u>COUNTRY</u>	<u>NUMBER</u>	<u>DATE</u>
Title)	Canada	149,128	July 8, 1913
Complete)			
	) Mexico	14,078	Apr. 10, 1913
Title (	Roumania	3,468	Sept. 21, 1913
not (
Complete (	England	22497/13	Jan. 14, 1913

FOREIGN PATENTS PENDING

Holland (Title not complete)

Russia (Title complete)

FOREIGN PATENTS ISSUEDPROCESS AND APPARATUS FOR REFINING
PETROLEUM (Separator)

	<u>COUNTRY</u>	<u>NUMBER</u>	<u>DATE</u>
Title (
Complete (	Mexico	9,051	May 17, 1909
	Canada	119497	July 20, 1909
	Austria	54082	Jan. 1, 1912
	Russia	22243	Aug. 28, 1912

"SCHEDULE 'B'

CONTRACTS

Trumble Refining Company (Cal. Corp.) and Petroleum Development Company, dated September 27, 1910.

Trumble Refining Company (Cal. Corp.) and Coalinga National Oil Company, dated July 10, 1911.

Trumble Refining Company (Cal. Corp.) and John R. Ott Contracting Company, dated February 15, 1912.

Trumble Refining Company (Cal. Corp.) and General Petroleum Company, dated March 15, 1912.

Trumble Refining Company (Cal. Corp.) and Recovery Oil Company, dated March 18, 1912.

Trumble Refining Company (Cal. Corp.) and General Petroleum Company, dated May 15, 1912.

Trumble Refining Company (Cal. Corp.) and General Petroleum Company, dated June 26, 1912.

Trumble Refining Company (Cal. Corp.) and General Petroleum Company, dated June 26, 1912.

Trumble Refining Company (Ariz. Corp.) and General Petroleum Company, dated August 29, 1912.

Trumble Refining Company (Ariz. Corp.) and Santa Maria Oil Fields of California, Limited, dated September 28, 1912.

Trumble Refining Company (Ariz. Corp.) and Warner-Quinlan Asphaltum Company, dated October 26, 1912.

Trumble Refining Company (Ariz. Corp.) and Pacific Crude Oil Company, dated November 30, 1912.

Trumble Refining Company (Ariz. Corp.) and American Union Oil & Refining Company, dated January 8, 1913.

Trumble Refining Company (Ariz. Corp.) and Santa Maria Oil Fields of California, Limited, dated February 8, 1913.

Trumble Refining Company (Ariz. Corp.) and General Petroleum Company, dated June 11, 1913.

Trumble Refining Company (Ariz. Corp.) and General Petroleum Company, dated June 11, 1913.

Trumble Refining Company (Ariz. Corp.) and General Petroleum Company, dated June 11, 1913.

Trumble Refining Company (Ariz. Corp.) and North American Oil Consolidated, dated November 14, 1913.

“We, the undersigned, Stockholders of TRUMBLE REFINING COMPANY, owning and holding as his separate right the number of shares set opposite his name, and owning and holding in the aggregate more than two-thirds ($2/3$) of the subscribed, issued, capital stock of said TRUMBLE REFINING COMPANY, do hereby expressly consent to the execution of the foregoing agreement and do hereby expressly consent and concur in and request the officers and Board of Directors of said TRUMBLE REFINING COMPANY as the same are now constituted, or may hereafter be constituted, to exe-

cute any or all assignments, transfers, deeds or other papers necessary to carry out the terms of the foregoing agreement and to transfer unto the purchaser therein named the property therein contemplated to be transferred, hereby stipulating that this consent shall apply not only to this agreement but to any other instrument referred to or contemplated by this agreement, or necessary or proper to carry it into effect.

MILON J. TRUMBLE	Shares owned	887,681.
F. M. TOWNSEND	Shares owned	383,407.
A. J. GUTZLER	Shares owned	363,628.
.....	Shares owned	.....
GENERAL PETROLEUM)		
COMPANY)		
By JOHN BARNESON)	Shares owned	1,999,980
President		

Attest:

C. R. STEVENS
Secretary

“Office of

TRUMBLE REFINING COMPANY,
Los Angeles, California.

“I, FRANK L. A. GRAHAM, Secretary of the TRUMBLE REFINING COMPANY, do hereby certify that each of the foregoing persons whose names are signed to said consent to the foregoing contract, were, at the date of the execution of said consent the owners and holders of the shares of stock set opposite their respective names upon the books of said corporation.

FRANCIS M. TOWNSEND	383,407 shares
MILON J. TRUMBLE	887,681 shares
A. J. GUTZLER	363,628 shares
GENERAL PETROLEUM COMPANY	1,999,980 shares

and that the said persons ever since have been and now are the owners and holders of such shares of stock on the books of said corporation.

“I further certify that the total authorized capital stock of said TRUMBLE REFINING COMPANY is FIVE MILLION shares, and that the total number of shares which have been subscribed and issued is FOUR MILLION shares.

“IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said TRUMBLE REFINING COMPANY, this 7th day of April, 1915.

FRANK L. A. GRAHAM

Secretary of

TRUMBLE REFINING COMPANY

“EXHIBIT D

COPY OF EXTRACT FROM THE PRESIDENT'S
REPORT FOR THE YEAR 1915

“The President desires further to report that the contract entered into with W. Meischke-Smith does not affect the business of the corporation in so far as any outstanding licenses of this corporation are concerned. In other words, Trumble Refining Company retains all business from which it had in the past received any profit or income.’

"EXHIBIT E

"January 6, 1921

"Commissioner of Internal Revenue,
Washington, D. C.

Dear Sir:

"In the month of April, 1911, the General Petroleum Company, which was at that time the Esperanza Oil Company, entered into an agreement with the Trumble Refining Company of Arizona, covering the use of an oil refining process, realizing that this process affected a great saving of oils treated and was much less expensive of installation and was much more economical in operation than any other process known. Under this agreement the Esperanza Oil Company contemplated the construction of a pipe line from the oil fields to Los Angeles and the construction of plants for the use of the process for refining this oil.

"In the month of July, 1912, a plant located at Kerto, California, was completed and commenced operation with a capacity of 2,500 barrels per day and early in 1913 the pipe line was completed to Los Angeles and plant put in operation with a capacity of 20,000 barrels and in July, 1913, a plant with a capacity of 10,000 barrels was completed at Mojave, California, which was later on moved to Los Angeles. All of this installation of refining plants was in conformity to agreements made in April, 1911.

Yours very truly,

GENERAL PETROLEUM CORPORATION,

By (signed) John Barneson,

President.

"EXHIBIT F

"January 6, 1921

"Commissioner of Internal Revenue,
Washington, D. C.

Dear Sir:

"In the month of April, 1915, we purchased from the Trumble Refining Company of Arizona, all of its letter patents of the United States and patents pending in the United States, together with all foreign rights thereto, covering a process for refining petroleum for which we paid in cash \$1,000,000.00. The Trumble Refining Company of Arizona retained all contracts which were then in existence, covering the use of these patents, representing business which had been developed up to that time. Trumble Refining Company informs us that they have the following contracts:

General Petroleum Corporation	Capacity of Plant	25,000 bbls.
Petroleum Development Company	" " "	<u>6,000</u> "
Santa Maria Oil Fields Company	" " "	2,000 "
Warner Quinlan Company	" " "	2,500 "
J. R. Ott Contracting Company	" " "	1,000 "
Total daily capacity		<u>36,000</u> "

“A conservative estimate of oil run through the plants would be about 25,000 barrels per day, making the estimated annual output 9,125,000 barrels. With royalty at the rate of 1-1/2¢ per barrel would give a gross annual income of \$136,875.00.

“With these facts the Board of Directors of the Trumble Refining Company of Arizona informs us that they have placed a value on these contracts at that time of \$811,821.36, and we have been requested to give our opinion as to the value of these contracts.

“Having made a thorough investigation at the time we purchased these patents and being acquainted with the possibilities of the Trumble process, we believe that the value placed on these contracts by the Trumble Refining Company of Arizona was conservative.

Yours very truly,

SHELL COMPANY OF CALIFORNIA

(signed) J. C. Van Eck,
President.

"EXHIBIT G

"July 23, 1913.

"Mr. F. P. S. Harris,
Kohl Building,
San Francisco, California.

Dear Sir:

"Upon my return from the East, Messrs. Trumble and Gutzler brought up the matter of sale of foreign rights under the Trumble Patents and have informed me that you are particularly interested in Borneo, Sumatra, Roumania and Russia, in which you have a production of approximately 21,000,000 barrels per year.

"Estimating that your people will have a refining capacity of at least 21,000,000 barrels per year in the countries named, and that if the Trumble system was used, the savings thereby, over the ordinary processes, should be about as follows, for a period of say five years:

Saving in maintenance	\$ 500,000.00
Saving in labor, fuel, and general cost of operation	3,150,000.00
Saving in volume of oil refined over and above all old processes, estimated to be at least 2¢ per barrel	2,100,000.00
	<hr/>
Total	\$5,750,000.00

There should be added to this amount the saving in cost of Trumble plants over the cost of the old style refineries, of at least	1,000,000.00
	<hr/>
Total	\$6,750,000.00
	<hr/>
Or divided by five, making a total saving of	\$1,350,000.00
	<hr/>
	per year

“Another feature to be considered in connection with the installation of the Trumble system is the quickness with which plants can be assembled and put in operation; also the ease with which all of the apparatus can be shipped from the place of manufacture to the points desired.

“I have not conferred with a full Board of Directors in regard to this matter, but believe that the price of \$2,500,000.00 would be accepted by them as full payment for the rights in these countries. This statement is made with the reservation that other parties are considering the purchase of foreign rights and in the event that they should conclude to do business with us before the time your company should decide to accept this proposition, we are to be at liberty to transact business with the other parties.

Very truly yours,

(s) F. M. Townsend.

FMT-G

"EXHIBIT H

"TRUMBLE REFINING COMPANY OF ARIZONA

916 Higgins Building,
Los Angeles, California.

COMPUTATION OF TAXES

	1916	
Net income as reported	\$	82,702.83
Add depreciation of machinery in excess of agent's allowance		29.19
		<hr/>
Total	\$	82,732.02
Deduct:		
Depreciation of patent rights	\$54,121.42	
Additional depreciation of furniture and fixtures al- lowed by agent	40.14	
Loss on plant abandoned	595.00	54,756.56
		<hr/>
Net income, as revised	\$	27,975.46
		<hr/> <hr/>
Tax at 2%	\$	559.51
Tax paid		1,656.04
		<hr/>
Refund due	\$	1,096.53
		<hr/> <hr/> <hr/>

1917

Net income, per agent	\$ 88,727.83
Add interest accrued but not taken up by agent	460.00
	<hr/>
Total	\$ 89,187.83

Deduct:

Royalties for 1916 taken up
by agent \$ 206.57

Depreciation of patent
rights 54,121.42

54,327.99

Net income, as revised \$ 34,859.84

SCHEDULE 'A'

Capital stock and surplus, per agent . . \$1,137,221.70
Deduct surplus 17,221.70

Schedule 'A', as revised \$1,120,000.00

SCHEDULE 'B'

Total, per agent \$ 10,926.23

SCHEDULE 'C'

Total, per agent	\$1,079,487.22
Add liquidating dividends	185,057.41
	<hr/>
Total	\$1,264,544.63
Deduct royalty contracts included by agent in error	811,821.36
	<hr/>
Schedule 'C', as revised	\$ 452,723.27
	<hr/> <hr/> <hr/>

SCHEDULE 'D'

		<u>Adjusted Average</u>
Revised 1916 income tax pro rated	\$	304.62
Add:		
Dividend, January 15	\$32,000.00	
Less earnings for 14 days—		
14/365 of \$34,859.84	1,337.09	
	<hr/>	
Remainder	\$30,662.81	29,486.70
	<hr/>	
Dividend, May 1	\$16,000.00	
Less earnings for 106 days—		
106/365 of \$34,859.84	10,123.68	
	<hr/>	
Remainder	\$ 5,876.32	3,944.38
	<hr/>	

Dividend, July 1	\$32,000.00	
Less earnings for 74 days—		
74/365 of \$34,859.84	7,067.47	
	<hr/>	
Remainder	\$24,932.53	11,680.72
	<hr/>	
Dividend, October 15	\$16,000.00	
Less earnings for 93 days—		
93/365 of \$34,859.84	8,882.10	
	<hr/>	
Remainder	\$ 7,117.90	1,521.09
	<hr/>	<hr/>
Schedule 'D', as revised	\$	46,937.51
		<hr/> <hr/>

SCHEDULE I

Net income subject to excess profits tax \$ 34,859.84

SCHEDULE II

Schedule 'A'	\$1,120,000.00
Schedule 'B'	10,926.23
	<hr/>
Total	\$1,130,926.23
Schedule 'C'	452,723.27
	<hr/>
Remainder	\$ 678,202.96

Schedule 'D'	46,937.51
------------------------	-----------

Invested capital, as revised	\$ 631,265.45
--	---------------

SCHEDULE III

7% of invested capital	\$ 44,188.58
----------------------------------	--------------

Specific exemption	3,000.00
------------------------------	----------

Excess profits credit	\$ 47,188.58
---------------------------------	--------------

SCHEDULE IV

Excess profits tax	None
------------------------------	------

NORMAL TAX

Net income subject to tax at 2% and 4% \$	34,859.84
---	-----------

Normal tax	\$ 2,091.59
----------------------	-------------

Tax paid	11,870.68
--------------------	-----------

Refund due	\$ 9,679.09
----------------------	-------------

1918

Net income, per agent \$ 71,415.79

Deduct:

1917 income included by
agent \$ 460.00

Depreciation of patent
rights 54,121.42

Officers salaries 5,250.00 59,831.42

Net income, as revised \$ 11,584.37

SCHEDULE 'E'

Total, per agent \$1,174,783.75

Deduct surplus 54,783.75

Schedule 'E', as revised \$1,120,000.00

SCHEDULE 'F'

Total, per agent \$ 12,210.14

1916 refund due 1,096.53

Total Schedule 'F', as revised \$ 13,306.67

SCHEDULE 'G'

Total, per agent				\$1,127,259.41
Add liquidating dividends				259,234.03
Excess of patent rights over 25% of stock outstanding March 3, 1917, 25% of \$1,120,000.00				\$280,000.00
Patent rights	\$811,821.36			
Less depreciation	270,607.10	541,214.26		261,214.26
				<hr/>
Total				\$1,647,707.70
Deduct patent rights included by agent in error				811,821.36
				<hr/>
SCHEDULE 'G', as revised				\$ 835,886.34
				<hr/> <hr/> <hr/>

SCHEDULE 'H'

	<u>Amount</u>	<u>Earnings</u>	<u>Balance</u>	<u>Days</u> <u>Effective</u>	
Revised 1917 tax	\$ 2,091.59	\$	\$ 2,091.59	200	\$ 1,146.08
Dividend, Jan. 15	32,000.00	444.33	31,555.67	351	30,345.31
Apr. 15	16,000.00	2,856.42	13,143.58	261	9,398.56
July 15	27,200.00	2,888.16	24,311.84	170	11,323.32
Oct. 15	16,000.00	2,919.90	13,080.10	78	2,795.20
					<hr/>
Total Schedule 'H', as revised					\$ 55,008.47
					<hr/> <hr/> <hr/>

SCHEDULE I

Net income	\$ 11,584.37
----------------------	--------------

SCHEDULE II

Schedule 'E'	\$1,120,000.00
------------------------	----------------

Schedule 'F'	13,306.67
------------------------	-----------

Total	\$1,133,306.67
-----------------	----------------

Schedule 'G'	835,886.34
------------------------	------------

Remainder	\$ 297,420.33
---------------------	---------------

Schedule 'H',	55,008.47
-------------------------	-----------

Invested capital, as revised	\$ 242,411.86
--	---------------

SCHEDULE III

8% of invested capital	\$ 19,392.95
----------------------------------	--------------

Specific exemption	3,000.00
------------------------------	----------

Excess profits credit	\$ 22,392.95
---------------------------------	--------------

SCHEDULE IV

Excess profits tax	None
------------------------------	------

INCOME TAX

Net income	\$11,584.37	
Less exemption	2,000.00	
		<hr/>
Taxable at 12%	\$ 9,584.37	
		<hr/> <hr/>
Tax at 12%	\$	1,150.12
Tax paid		1,218.53
		<hr/>
Refund due	\$	68.41
		<hr/> <hr/>

1919

Net income, per agent	\$	72,057.74
Deduct:		
Depreciation of patent rights	\$54,121.44	
Salaries of officers	9,000.00	63,121.44
		<hr/>
Net income, as revised	\$	8,936.30
		<hr/> <hr/>

SCHEDULE 'E'

Total, per agent	\$1,120,000.00
	<hr/> <hr/>

SCHEDULE 'F'

Total, per agent	\$ 23,934.39
Add:	
Refund due for 1916 income tax	1,096.53
Refund due for 1917 income tax	9,679.09
	<hr/>
Total	\$ 34,710.01
Deduct difference in reserve and liquidation dividends	10,448.89
	<hr/>
Schedule 'F', as revised	\$ 24,261.12
	<hr/> <hr/>

SCHEDULE 'G'

Total per agent	\$1,129,304.80
Add:	
Liquidating dividends	315,498.16
Excess of patent rights over 25% of capital stock out- standing March 1, 1913, 25% of \$1,120,000.00 . \$280,000.00	
Patent rights . \$811,821.36	
Depreciation . 324,728.52 487,092.84 207,092.84	
	<hr/>
Total	\$1,651,895.80
Deduct patent rights included by agent in error	811,821.36
	<hr/>
Schedule 'G', as revised	\$ 840,074.44
	<hr/> <hr/>

SCHEDULE 'H'

		Adjusted Average
		<u> </u>
1918 revised income tax . . .	\$1,150.12	\$ 486.04
	<u> </u>	
Dividend, April 11	\$8,000.00	
Less earnings for 100 days—		
100/365 of \$8,936.30	2,448.30	
	<u> </u>	
Remainder	\$5,551.70	4,030.68
	<u> </u>	
Dividend, May 8	\$8,000.00	
Less earnings for 27 days—		
27/365 of \$8,936.30	661.04	
	<u> </u>	
Remainder	\$7,338.96	4,785.40
	<u> </u>	
Dividend, June 14	\$8,000.00	
Less earnings for 37 days—		
37/365 of \$8,936.30	905.87	
	<u> </u>	
Remainder	\$7,094.13	3,906.64
	<u> </u>	
Dividend, July 28	\$8,000.00	
Less earnings for 44 days—		
44/365 of \$8,936.30	1,077.25	
	<u> </u>	
Remainder	\$6,922.75	2,977.73
	<u> </u>	
Dividend, September 15 . . .	\$8,000.00	

Less earnings for 49 days—		
49/365 of \$8,936.30 . . .	1,199.67	
	<hr/>	
Remainder	\$6,800.33	2,012.15
	<hr/>	
Dividend, October 15	\$8,000.00	
Less earnings for 30 days—		
30/365 of \$8,936.30	734.49	
	<hr/>	
Remainder	\$7,265.51	1,552.63
	<hr/>	
Dividend, November 15	\$8,000.00	
Less earnings for 31 days—		
31/365 of \$8,936.30	758.97	
	<hr/>	
Remainder	\$7,241.03	932.41
	<hr/>	
Dividend, December 15	\$8,000.00	
Less earnings for 30 days—		
30/365 of \$8,936.30	734.49	
	<hr/>	
Remainder	\$7,265.51	636.58
	<hr/>	
Total		\$ 21,320.26
		<hr/> <hr/>

SCHEDULE 'A'

Net income	\$ 8,936.30
----------------------	-------------

SCHEDULE 'B'

Schedule 'E'	\$1,120,000.00
Schedule 'F'	24,261.12
	<hr/>
Total	\$1,144,261.12
Schedule 'G'	840,074.44
	<hr/>
Remainder	\$ 304,186.68
Schedule 'H'	21,320.26
	<hr/>
Invested capital, as revised	\$ 282,866.42
	<hr/> <hr/>

SCHEDULE 'C'

8% of invested capital	\$ 22,629.31
Specific exemption	3,000.00
	<hr/>
Excess profits credit	\$ 25,629.31
	<hr/> <hr/>

SCHEDULE 'D'

Excess profits tax	None
	<hr/> <hr/>

NORMAL TAX

Net income	\$8,936.30
Less exemption	2,000.00
	<hr/>
Amount taxable at 10%	\$6,936.30
	<hr/> <hr/>
Tax at 10%	\$ 693.63
Tax paid	760.51
	<hr/>
Refund due	\$ 66.88
	<hr/> <hr/>

1920

Net income, per agent	\$	99,394.90
Deduct:		
Depreciation of patent rights	\$54,121.44	
Salaries of officers	9,000.00	63,121.44
	<hr/>	<hr/>
Net income, as revised	\$	36,273.46
	<hr/> <hr/>	

SCHEDULE 'E'

Total, per agent	\$1,120,760.51
	<hr/> <hr/>

SCHEDULE 'F'

Total, per agent	\$	16,648.23
Add:		
Refund of income tax for 1916	1,096.53	
Refund of income tax for 1917	9,679.09	
Refund of income tax for 1918	68.41	
	<hr/>	
Total	\$	27,492.26
Deduct difference in reserve	2,126.39	
	<hr/>	
Schedule 'F', as revised	\$	25,365.87
	<hr/> <hr/>	

SCHEDULE 'G'

Total, per agent			\$1,130,999.94
Add:			
Liquidating dividends			376,713.57
Excess of patent rights over 25% of capital stock out- standing March 3, 1917— 25% of \$1,120,000.00 . . .			\$280,000.00
Patent rights	\$811,821.36		
Depreciation	378,849.96	432,971.40	152,971.40
	<hr/>	<hr/>	<hr/>
Total			\$1,659,684.91
Deduct patent rights included by agent in error			811,821.36
			<hr/>
Schedule 'G', as revised			\$ 847,863.55
			<hr/> <hr/>

SCHEDULE 'H'

		Adjusted Average
		<hr/>
1919 income tax, as revised	\$ 693.63	\$ 292.30
Dividend, February 14.	4,000.00	
Less earnings for 44 days— 44/365 of \$36,273.46	4,372.69	
	<hr/>	
Remainder . . . . .	.....	.....

Dividend, March 5	\$4,000.00	
Less earnings for 64 days	\$6,360.28	
Deduct dividend Feb- ruary 14	4,000.00	2,360.28
	<hr/>	<hr/>
Remainder	\$1,639.72	\$ 1,356.70
	<hr/>	
Dividend, April 10.	\$4,000.00	
Less earnings for 36 days— 36/365 of \$36,273.46	\$3,577.66	
	<hr/>	
Remainder	\$ 422.34	307.79
	<hr/>	
Dividend, May 10	\$4,000.00	
Less earnings for 30 days— 30/365 of \$36,273.46	2,981.38	
	<hr/>	
Remainder	\$1,018.62	658.61
	<hr/>	
Dividend, June 15	\$8,000.00	
Less earnings for 36 days— 36/365 of \$36,273.46	3,577.66	
	<hr/>	
Remainder	\$4,422.34	2,423.20
	<hr/>	
Dividend, July 10	\$8,000.00	

Less earnings for 25 days—

25/365 of \$36,273.46 . . . 2,484.48

Remainder \$5,515.52 2,644.43

Dividend, August 2 \$8,000.00

Less earnings for 23 days—

23/365 of \$36,273.46 . . . 2,285.74

Remainder \$5,714.26 2,379.64

Dividend, September 1 \$8,000.00

Less earnings for 30 days—

30/365 of \$36,273.46 . . . 2,981.38

Remainder \$5,018.62 1,677.46

Dividend, October 1 \$8,000.00

Less earnings for 30 days—

30/365 of \$36,273.46 . . . 2,981.38

Remainder \$5,018.62 1,264.97

Dividend, November 1 \$8,000.00

Less earnings for 31 days—		
31/365 of \$36,273.46 . . .	3,080.76	
	<hr/>	
Remainder	\$4,919.24	822.12
	<hr/>	
Dividend, December 1	\$8,000.00	
Less earnings for 30 days—		
30/365 of \$36,273.46 . . .	2,981.38	
	<hr/>	
Remainder	\$5,018.62	426.24
	<hr/>	
Total Schedule 'H', as revised	\$	14,253.46
	<hr/> <hr/>	

SCHEDULE 'A'

Net income as revised	\$	36,273.46
	<hr/> <hr/>	

SCHEDULE 'B'

Schedule 'E'	\$1,120,760.51	
Schedule 'F'	25,365.87	
	<hr/>	
Total	\$1,146,126.38	
Schedule 'G'	847,863.55	
	<hr/>	
Remainder	\$	298,262.83
Schedule 'H'	14,253.46	
	<hr/>	
Invested capital, as revised.	\$	284,009.37
	<hr/> <hr/>	

SCHEDULE 'C'

8% of invested capital	\$	22,720.75
Specific exemption		3,000.00
		<hr/>
Total	\$	25,720.75
		<hr/> <hr/>

SCHEDULE 'D'

EXCESS PROFITS TAX:

	<u>Amount</u>	<u>Credit</u>	<u>Balance</u>	<u>Rate</u>	<u>Tax</u>
Not over					
20% of					
invested					
capital	\$36,273.46	\$25,720.75	\$10,552.71	20%	\$2,110.54

INCOME TAX:

Net income \$36,273.46

Less:

Excess profits tax \$2,110.54

Exemption 2,000.00 4,110.54

Balance taxable at 10% \$32,162.92

Tax at 10% 3,216.29

Total tax, tentative \$ 5,326.83

SCHEDULE 'H' (FINAL)

Taxable net income \$36,273.46
 Less tentative tax 5,326.83

Balance of net earnings \$30,946.63

Average net earnings per diem \$84.78528.

	Date	Amount	Earnings	Balance	Days effective	Amount
	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Dividend	Feb. 14	\$4,000.00	\$3,730.55	\$ 269.45	322	\$ 237.71
	Mar. 5	4,000.00	1,695.71	2,304.29	302	1,906.56
	Apr. 10	4,000.00	3,052.27	947.73	266	690.67
	May 10	4,000.00	2,543.56	1,456.44	236	941.70
	June 15	8,000.00	3,052.27	4,947.73	200	2,711.08
	July 10	8,000.00	2,119.63	5,880.37	175	2,819.36
	Aug. 2	8,000.00	1,950.06	6,049.94	152	2,519.43
	Sept. 1	8,000.00	2,543.56	5,456.44	122	1,823.80
	Oct. 1	8,000.00	2,543.56	5,456.44	92	1,375.32
	Nov. 1	8,000.00	2,628.34	5,371.66	61	897.73
	Dec. 1	8,000.00	2,543.56	5,456.44	31	463.42
1919 income tax		693.63			.4214	292.30

Total Schedule 'H', as revised \$16,679.08

SCHEDULE 'B' (Final)

Schedule 'E'	\$1,120,760.51
Schedule 'F'	25,365.87
	<hr/>
Total	\$1,146,126.38
Schedule 'G'	847,863.55
	<hr/>
Remainder	\$ 298,262.83
Schedule 'H'	16,679.08
	<hr/>
Invested capital, as revised	\$ 281,583.75
	<hr/> <hr/>

SCHEDULE 'C' (Final)

8% of invested capital	\$ 22,526.70
Specific exemption	3,000.00
	<hr/>
Excess profits credit	\$ 25,526.70
	<hr/> <hr/>

SCHEDULE 'D' (Final)

EXCESS PROFITS TAX

	<u>Amount</u>	<u>Credit</u>	<u>Balance</u>	<u>Rate</u>	<u>Tax</u>
Not over					
20%	\$36,273.46	\$25,526.70	\$10,746.76	20%	\$2,149.35

INCOME TAX

Net income	\$36,273.46
----------------------	-------------

Less:

Excess profits tax	\$2,149.35	
Exemption	2,000.00	4,149.35

Amount taxable at 10% \$32,124.11

Tax at 10% \$ 3,212.41

Total tax assessable \$ 5,361.76

Tax paid 5,730.59

Refund due \$ 368.83

SUMMARY OF TAX COMPUTATIONS

. TOTAL TAX

Year	Per Agent	As revised	As paid	Refund due
1916	\$ 1,656.04	\$ 559.51	\$ 1,656.04	\$ 1,096.53
1917	52,160.66	2,091.59	11,870.68	9,679.09
1918	49,014.61	1,150.12	1,218.53	68.41
1919	28,806.56	693.63	760.51	66.88
1920	41,381.65	5,361.76	5,730.59	368.83
Total	\$173,019.52	\$9,856.61	\$21,236.35	\$11,279.74

“TRUMBLE REFINING COMPANY OF ARIZONA
916 HIGGINS BUILDING
LOS ANGELES, CALIFORNIA

JURAT

“A. J. Gutzler, being duly sworn, deposes and says that he is the secretary of the Trumble Refining Company of Arizona; that he has read the foregoing brief, and that the facts contained therein are true and correct to the best of his knowledge and belief.

A. J. GUTZLER

Signed and sworn to before me
this 30th day of January,
nineteen hundred and twenty-two.

PEARL TRALLE

Notary Public

(SEAL)”

(Testimony of E. P. Adams)

DIRECT EXAMINATION

resumed by Mr. Mackay:

The crux of the protest is that the Trumble Refining Company was claiming, or endeavoring to establish the March 1, 1913 value of its license agreements for the purpose of depreciation.

I am the Mr. E. P. Adams referred to in the letter attached as Exhibit "M" of Plaintiffs' "Exhibit 1". I was in Washington, D. C. on December 9, 1922 in connection with the case of the Trumble Refining Company for the year 1917, and other cases. The Trumble case involved the years 1917, 1918, 1919, 1920. I don't recall the man's name with whom I had a conference. He was in charge of the Special Audit Section. The Special Audit Section was a section of the Bureau of Internal Revenue. I had a discussion with him in respect to the determination of the tax liability for the year 1917, and also the other years.

I told the head of the Special Audit Section that I would like to then take up all the years 1917 to 1920. He said they had not reached the point of reviewing the Revenue Agent's report and our protest and that at that time it could not be taken up.

I asked him, "Well, how about 1917? Will you hold that and take them all up together?"

He said, "Yes. When you go back send me a waiver", which I did when I returned to Los Angeles.

(Testimony of E. P. Adams)

I prepared the telegram attached as Exhibit "N" to Plaintiffs' "Exhibit 1" for the Trumble Refining Company and in this telegram was referring to the informal conference on December 9, 1922.

I am and was familiar with Exhibit "O", which is attached to the Stipulation, "Exhibit 1". That is a telegram from the Commissioner of Internal Revenue to the Trumble Refining Company dated May 21, 1923. Pursuant to that telegram, I prepared a formal protest and filed it with the Commissioner of Internal Revenue at Washington, D. C.

The document handed me dated April 29, 1924, is a copy of the original protest filed at that time. After this protest and brief was presented to the Commissioner of Internal Revenue I had a conference with respect to the years 1917, 1918, 1919 and 1920, and particularly with reference to the issue as to whether or not the Trumble Refining Company was entitled to depreciation on its license agreements.

The conference took place about a week after the protest was dated. I prepared the protest and took it back to Washington with me at that time. I think it would be about May 7 or 8 in 1924. I made an oral presentation besides and was at that time demanding that the Commissioner allow the Trumble Refining Company deductions for depreciation on its license agreements for all years. At that time the Commissioner's representatives had the complete file before them.

(Testimony of E. P. Adams)

EXAMINATION BY THE COURT

At the time of my conference in Washington during December, 1922 with one of the agents from the office of the Commissioner, I brought up the subject matter and asked to have considered the claims on behalf of the taxpayer for an allowance of depreciation on license agreements for the year 1917, as well as subsequent years to 1920. At this conference the Agent in the Commissioner's office did not say in words or in substance that the Commissioner's office would not give consideration to this claim so far as it concerned the year 1917 because it was too late to bring the matter up, or for any other reason.

I had another conference with an Agent in the office of the Commissioner early in May, 1924.

“THE COURT: Well, may I interrupt here and ask, during this conference that you had some time in May of 1924 with an agent from the office of the Commissioner of Internal Revenue, was there exhibited, or any reference there made, to the protest that you had prepared and caused to be submitted in February, 1922?”

THE WITNESS: Yes, sir. That protest and the revenue agent's report were in the hands of the Member that I was conferring with.”

In the course of this conference the claim for refund insofar as it concerned the year 1917 came up and was discussed with the Commissioner's representative. It had come up—I don't remember exactly on it—it naturally would, with the whole file there for all the years. At this

(Testimony of E. P. Adams)

conference the Commissioner's representative did not say in words or substance that no discussion would be had, or no consideration given to a claim on the part of the taxpayer for a refund covering the year 1917 on account of and by way of depreciation on the license agreements. The general subject matter of my conference with the Commissioner's representative in May, 1924 had to do with the claim for refund of depreciation on these license agreements. I have no notes on that conference.

The additional tax covered in the protest filed about February 1, 1922 pertained to the years 1917, 1918, 1919 and 1920.

In the conference I had with the Commissioner's representative in May, 1924, so far as it pertained to the business of this taxpayer, I talked in general about valuation of those agreements. That was the main issue and until that was determined, the matter of tax could not be settled, one way or another. Yes, the valuation of those agreements as of March 1, 1913 to determine depreciation was discussed. The conversation in this conference of May, 1924, so far as it dealt with the valuation of license agreements was not confined to the tax for any one year. It would include 1917 to 1920 after the determination of the value. I don't think this conference included any discussion with reference to any tax already assessed or paid

(Testimony of E. P. Adams)

for those years. I don't recall it because, as I say, we were confining ourselves to trying to arrive at a value, I had the president of the company along with me as a witness to go into that angle of it and we spent all morning on that.

I was in Washington attempting to establish a value for those patent license agreements because that was the crux of the whole case of the Trumble Refining Company—the value of those patents and invested capital. In the claim for refund for 1917 we had set up and claimed depreciation on those license agreements. The Agent in his report had disallowed, and my protest of February, 1922 set forth in detail how we acquired those patents and license agreements, what they had cost us and what the market value as of March 1, 1913 was according to the books and the company's own estimated value—something like two and one-half million dollars is what they showed. Then, supported with that was a detailed schedule showing the taxes by years for the years 1916 to 1920, inclusive, taking depreciation on the patents. That showed a refund due in each year for 1916 to 1920, inclusive, so all of those conferences—all of my trips to Washington were on the idea of getting our money for 1917—getting our money for every year. To do that it was necessary to establish the value to the Government's satisfaction in March, 1913, so consequently that was what we were discussing in all of these conferences.

A copy of the protest filed by Mr. Adams in May, 1924 (about May 2nd) was then introduced in evidence as Plaintiffs' Exhibit 4:

PLAINTIFFS' EXHIBIT 4

“TRUMBLE REFINING COMPANY OF ARIZONA
804 HIGGINS BUILDING
LOS ANGELES, CALIFORNIA

“April 29, 1924

“Hon. Charles D. Hamel,
Chairman, Committee on Appeals and Review,
Washington, D. C.

Sir:

“Reference is made to correspondence in connection with the appeal pending before your committee in connection with the proposed assessment of additional income and profits taxes for the year 1918.

“We are submitting herewith a brief setting forth in summary the facts regarding the points at issue with the Income Tax Unit and the contentions of the taxpayer relative thereto.

Respectfully,

TRUMBLE REFINING COMPANY OF ARIZONA

By F. M. TOWNSEND

President.

“TRUMBLE REFINING COMPANY OF ARIZONA
804 HIGGINS BUILDING
LOS ANGELES, CALIFORNIA

“Brief presenting protest of this taxpayer to the decisions of the Income Tax Unit on which the assessment of additional income and profits taxes has been made for the year 1917 and is proposed for 1918 and subsequent years.

“OUTLINE OF BRIEF

“This taxpayer has entered an appeal to the Committee on Appeals and Review from the contentions of the Income Tax Unit set forth in memorandum dated January 14, 1924 as follows:

1. That this taxpayer on April 2, 1915 disposed of all rights held under United States Letter Patent 996,736 and 1,002,474.
 2. That the taxpayer having retained nothing of its patents, any deductions for depreciation based on such patents should be disallowed.
 3. That the minimum value of such patent rights at March 1, 1913 cannot be determined on the basis of the data submitted by the taxpayer.
-

“STATEMENT OF FACTS, CONTENTIONS
AND CONCLUSIONS

“1. Patent rights held by the taxpayer subsequent to April 2, 1915 and depreciation thereof.

“In connection with this point the Unit’s position is stated in the memorandum as follows:

“ ‘Facts:

All the patents were sold in April, 1915, for one million dollars, the company retaining some seventeen royalty contracts made at various dates, from January, 1911 to July, 1913, based upon these patents sold. The alleged value of these contracts was set up by deducting the one million received from the sale of patents from the alleged March 1, 1913 value of patents and patent right. It is this latter sum which taxpayer now claims is depreciable.’

“ ‘Unit’s Contentions:

The Unit cannot concede the contention of the taxpayer, either as to the March 1, 1913 value of the patents or the contention that royalty rights, such as are present in the taxpayer’s case, are depreciable.’

“The position of the Unit as set forth in the above it is contended is not in accord with the facts, logic, or the law, and in support of this contention we submit the following summarized statement:

“In this matter we must consider the class of property in which the Trumble Refining Company had its total investment.

“Patents on inventions are classed as property by courts and by text writers on the subject. Walker on Patents, one of the most often quoted and relied upon by the

United States Courts states in Sec. 151 to 153 in the 5th Edition of that book:

“‘Patent rights are property, and the very essence of the rights conferred by the patent is the exclusion of others from its use. The owner of a patent is both legally and equitably entitled to the same protection for that property, that the owner of any other species of property may enjoy, and he cannot be constitutionally deprived of that property without due process of law.’

“In Section 152 we find:

“‘The right of property which an inventor has in his invention, is excelled, in point of dignity, by no other property right whatever. It is equalled in point of dignity, only by the rights which authors have in their copyrighted books. The inventor is not the pampered favorite or beneficiary of the government, or of the nation. The benefits which he confers, are greater than those which he receives. . . . He walks everywhere erect and scatters abroad the knowledge which he created. He confers upon mankind a new means of lessening toil, or of increasing comfort, and what he gives cannot be destroyed by use, nor lost by misfortune. It is henceforth an indestructible heritage of posterity. On the one hand, he receives from the government nothing which cost the government or the people a dollar or a sacrifice.

“‘He receives nothing but a contract, which provides, that for a limited time he may exclusively enjoy his own. Compared with those who acquire property by devise or inheritance: compared with those who acquire by gifts or marriage: compared with those who acquire property by profit on sales, or by interest on money: The man

who acquires property in inventions, by creating, things unknown before, occupies a position of superior dignity.'

"In Section 153, we read:

"'Letters Patent are not to be regarded as monopolies, created by the executive authority at the expense and to the prejudice of all the community except the persons therein named as patentees, but as public franchises granted to inventors of new and useful improvements, for the purpose of securing to them, as inventors, for the limited term therein mentioned, the exclusive right and liberty to make and use and vend to others to be used, their own inventions, as tending to promote the progress of science and the useful arts, and as a matter of compensation to the inventors for their labor, toil and expense in making the inventions, and reducing the same to practice for the public benefit, as contemplated by the Constitution and sanctioned by the laws of Congress.

"'Such is the accepted doctrine as formulated by Justice Clifford when speaking for the Supreme Court. The same ideas were more concisely expressed in an earlier case by Justice Daniel. . . .' (Walker on Patents, 5th Ed., pages 184 to 190.)

"The granting of a patent to the inventor is an acknowledgment by the government that a valuable addition to the arts and sciences has been bestowed upon the world at large by him and in fulfillment of the promise made to him for such bestowal, he shall have the full and complete control over its use or employment for the limited period named in order that he may be repaid or compensated for the labor, toil and expense in making the invention.

“The amount of such compensation must be acceptable to him, or otherwise he may not part with his dominion over the entire enjoyment. When he has set his valuation upon the right to use or employ the invention, there is no one with power or authority to gainsay or alter the price or terms. His right to the full control is paramount, and no appeal can be made therefrom except in a case of eminent domain arising as between him and the government.

“He may exchange or confer the full right or any portion thereof upon others as he may see fit and accept in payment therefore whatsoever he may. The thing or consideration may be in cash money or that which represents a cash valuation to him, but no matter what it may be that he receives, it is to him a compensation for his labor, toil and expense in making the invention. If he demands and receives one million dollars in a stock representing to him a value of one million dollars it must not be said that he had not demanded and been paid that amount because another person without knowledge of the true intrinsic value of the thing represented by the stock would not have purchased the same for cash for the amount of one million dollars.

“The government contract with the inventor (Letters Patent) witnesses the fact that a return is due the inventor to repay him for the bestowal of his knowledge gained through toil, labor and expense.

“In the proof required by the government from the inventor he must set the metes and bounds of his property, to establish the extent to which his rights are limited. Within such boundaries no one may trespass without his consent. He may admit one or many; he may deny one or all; he may limit their stay within his property

for a day or for the full term for which his contract with the government may inure.

“Whatsoever he possesses as his patent he may enjoy by himself or with others upon whatsoever terms or conditions he may impose or exact, but his supreme control ceases upon the expiration of the Letters patent (the contract with the government).

“He may part with the legal title to the property, but retain unimpaired, any particular part of the benefits to any certain right governed or existing by or through the execution of the contract, (Letters Patent) by the government, and such residue remaining or part so retained is a part of the whole so granted by the government, undivisible and unseparable therefrom; running with and exhausting with the term of the contract which is the sole basis upon which the entire structure is founded.

“The Trumble Refining Company before April 2, 1915, was the sole owner of the Trumble patents, having paid to the former owners the full purchase price demanded by them as compensation for the labor, toil and expense in making the inventions. Being then the full owner of the patents, the Trumble Company was endowed with full right to the enjoyment of such rights in any manner it saw fit. In exercising such rights it saw fit to delegate to others the right to use and employ a portion of its property duly described and identified by written instruments. The boundaries within which such parties were authorized to participate were established, and the term or terms of such enjoyment were determined, all subject to the fulfillment of the obligations imposed by the Trumble Company.

“The entire ownership of the patents by the Trumble Company was not, nor could not be disputed at that time.

“On April 2, 1915, it was agreed by and between the Trumble Refining Company and one W. Meischke-Smith that reserving to the Company that portion of the property within the patent rights already occupied by the company as evidenced by the licenses named as Schedule ‘B’ that the residue or remainder should pass to Mr. Meischke Smith for a cash consideration.

“The purchase agreement sets forth four outstanding facts as follows:

“First: W. Meischke Smith excluding the license agreements named in Schedule ‘B’ was desirous of purchasing the patents and inventions of the company together with all future inventions of M. J. Trumble which thereafter might become the property of the company.

“It is to be noted that no desire to purchase the rights covered by licenses of Schedule ‘B’ was present.

“Second: The company accepting the property covered by licenses named in Schedule ‘B’ sold the property named in Schedule ‘A’.

“It is to be noted that the company by excepting the property in schedule ‘B’ remained in full and undisturbed possession thereof. No change or alteration of the relations existing before the sale took place between the parties to these licenses because of such sale. The full purpose for which the instruments were executed remained unchanged; the obligations upon both sides remained the same; the user under the patent rights was bound under the terms thereof to pay tribute to the owner of the patent rights as set forth in the instrument. He was not obligated to pay tribute to one who was not the owner of the patent rights so enjoyed by him. If the company did not retain its ownership in and to the patent rights to the

extent defined, then the licensed user was free of his obligations to pay it tribute. The buyer, W. Meischke Smith, was without power to compel payment of tribute for the reason he never purchased, acquired or possessed such rights.

“Third: The consideration moving the company to part with the legal title to the patents was the payment of one million dollars and the retention undisturbed of all rights inclusive with the licenses named in schedule ‘B’. Without this full consideration the transaction would not have been consummated. It required both considerations to satisfy the demands of the company.

“Fourth: A further consideration moving from the purchaser to the company was the guarantee by the purchaser to in every way respect the full rights reserved; to refrain in all ways from interfering with the users so licensed by the company by attempting to acquire the rights granted them and if he should have acquired by purchase any of the property so leased by the company, he was obligated to pay to the company the tribute as specified in the license as existing by and between the company and the user.

“This fact alone undisputably shows that the purchaser never questioned the fact that that portion of the patent property was still the property of the company and in no way affected by his purchase of the residue remaining with the passing of the legal title; otherwise it would not have been within reason for him to pay tribute to the company for the use of a patented device of which he himself was the owner.

“If further light is desired as to the intent and purpose surrounding the purchase from the Trumble Company, we find that a specific assignment and transfer of

three licenses granted by the company and not included in schedule 'B' were made to Meischke Smith. This proves that the entire rights were not conveyed by the assignment, as a part of the rights were occupied at the time and recognized as being so appropriated, thereby leaving a residue to be transferred, which constituted the right sold by the company and not all rights that go to make up the full and complete enjoyment of the invention as granted by the issuance of a patent.

"If the purpose of the purchase and sale affected by and between the company and W. Meischke Smith was to vest in Meischke Smith all rights and powers of complete ownership, the procedure would have been to assign him all, and for him to have granted a license to the company covering the rights covered by licenses according to schedule 'B' in which event the rights so covered would have originated in him. As it stood he had no part in those rights at any time.

"The sale to Meischke Smith in no way affected the ownership of the patent rights by the company and it has never been within the power of Meischke Smith to change, alter or control in any way the patent rights as licensed to the users named in schedule 'B'.

"It goes without saying that there was a certain portion within the boundaries of the patent property which he, Meischke Smith, never purchased, became possessed of or occupied, and which he had specifically disclaimed and agreed he would not trespass thereupon.

"If the purchaser does not own that portion of the patent rights, the Trumble Refining Company does, and that right runs with the patent grant exactly in accordance with the contract of the patent.

“The owner of a patent, like the owner of any other property, may deal with it as he sees fit. He may sell undivided interests to any number of persons in any sizes that he likes, he may license temporarily or permanently. He may assign the whole legal title and reserve the entire beneficial interest to himself, or any part thereof, or he may reserve a license to the use thereof after disposing of the whole legal title. All these transactions would be perfectly legal and valid, and whenever such a situation occurs, it is obvious that the whole interest of the patentee has not passed, and it is absolutely immaterial what the right, interest or estate retained may be called.

“The situation is precisely analagous to the case of a man selling real estate. He may sell the whole of it or he may sell any number of undivided interests. He may transfer the legal title, reserving mineral rights; he may transfer the legal title reserving rights of way, or he may transfer the legal title entirely reserving, however, the entire beneficial interest as where he directs that the income be reserved to him for his lifetime.

“In this case, as well as in the case of the patent, unless the whole legal title and the whole beneficial interest passes to the purchaser, there remains something in the vendor that has not been sold, and this situation is constantly taken advantage of by the government in determining profits on sales.

“From the foregoing we respectfully must contend that the Trumble Refining Company was the owner at all times, subsequent to acquirement in 1910 of the patent applications and the issuance of Letters Patent in 1911, of all patent rights appertaining to the use of which was licensed under the royalty contracts shown in ‘Exhibit ‘A’.

"It is further contended that the Income Tax Unit is in error in the following statement appearing in the memorandum:

" 'The taxpayer's case is not analogous to that cited in A. R. M. 35, as, in this case under consideration, taxpayer retains no interest in the earnings from assigned patents.'

"A. R. M. 35 reads as follows:

" 'A invented certain apparatus and secured United States Patents thereon. The patents were assigned to a foreign corporation under an agreement by which he retained 40 per cent interest in profits therefrom. Legal title to the patents passed to the company subject to the agreement mentioned. A's interest was recognized by the company and by the United States licensees under the patents. The Committee is of the opinion that the agreement should be recognized as giving A a depreciable interest in the patents.

" 'The value of each patent as of March 1, 1913 should be segregated and the depreciation allowable thereon determined on the basis of its own life instead of using as a basis the average life of all the patents in bulk. Of the total depreciation allowable for any year, sixty per cent is deductible in the return of the company and forty per cent in A's return.'

"In the case referred to title to the Letters Patent passed to an outside party for a consideration including among other things a reservation of forty per cent of the future royalties to accrue from licensing the use of the patents.

"In the case of the Trumble Refining Company title to the Letters Patent was passed for a consideration of

\$1,000,000.00 cash and the reservation to the Trumble Refining Company of all interest in the patents applying to eighteen royalty contracts then in effect. The latter was recognized by both parties as of equal weight in the final negotiations as shown by the affidavit of F. M. Townsend, A. J. Gutzler and M. J. Trumble attached hereto as Exhibit 'A', and particularly reference to the following statement is hereby made:

“That after several days further negotiations the said Smith referred the matter to the London office of his company, and in a few days was advised to offer the Trumble Refining Company the sum of one million dollars for its total business, including patent rights in all countries of the world and the assignment of all license agreements then in force with other companies.

“That the said deponents declined this proposal, explaining that the business already developed was worth more than the money offered as royalties for the previous year were nearly seven per cent on a million dollars.’

“In the light of these facts we must of necessity conclude that the Unit's position is not in accord with that of the Committee as already set forth in A. R. M. 35 previously quoted.

“It is accordingly requested that the decision of the Unit that the Trumble Refining Company retained nothing of its patent rights after April 2, 1915 be reversed.

“2. Depreciation of patent rights.

“The Unit through its contention as set forth under No. 1, has held that the Trumble Refining Company is not entitled to any depreciation deductions claimed for patent rights or any part of such rights. This contention on the part of the Unit is clearly not in accord with the

decision of the Committee as set forth in A. R. M. 35 previously referred to and quoted. It is accordingly respectfully requested that the decision of the Unit on this point be reversed.

“3. Valuation of patent rights as a basis for depreciation.

“The Unit in conference and in summary in its memorandum made the following contentions:

“1. That basis of valuation of the retained rights was erroneous in that such rights were not a part of the patents.

“2. That in determining the value of the patent rights at March 1, 1913 royalties earned for the four to five years prior to date of valuation were required and future earnings could not be considered.

“3. That the value determined as of the basic date would have to be segregated as between the two patents.

“These contentions by the Unit we submit are not in accord with the law and the interpretation thereof as promulgated by the Commissioner through the regulations and rulings issued thereunder, and we submit hereunder the facts, arguments and conclusions of this taxpayer in connection therewith.

“1. Royalty rights not a part of patents.

“This point was covered in detail in Section 1 of this brief and it is not deemed necessary to discuss further at this point to show the fallaciousness of the Unit’s position.

“2. Basis of valuation of patents as of March 1, 1913.

“The Unit in support of its contention refers to A. R. R. 34 in which is outlined a method of determining the value of intangibles and wherein it is stated ‘allow out of

average earnings over a period of years prior to March 1, 1913, preferably not less than five years, a return etc.' The representative of the taxpayer called attention to the fact that such a period was not to be considered mandatory, but was named in a restrictive sense only where operations extended over a long period. That this is the sense in which used by the Committee is shown by reference to A. R. R. 252 where a period of 3-1/3 years was used and A. R. R. 799 where two years were used. It was further pointed out to the Unit that such basis of the use of prior earnings only was advanced in cases of manufacturing companies where the logical conclusion was that any increase would be as a result of future sales and distribution endeavor, whereas in the case of this company the increase in royalties to be secured over past periods was already contracted for and the principal plants nearing completion at the basic date and in fact were producing revenue in June of 1913 and August, respectively. The Unit representatives insisted that the future earnings had not been considered and that such a precedent would have to be from the Committee. This in spite of A. R. R. 2991 issued just prior to the conference, and 1086 in which it is stated:

“The Committee has repeatedly held that earnings subsequent to a basic date, unsupported by other evidence, cannot be accepted as a basis of valuation as of the basic date.’

“There are submitted herewith as Exhibits ‘B’ and ‘C’ statements showing the royalties earned by this company and the contracts held as of March 1, 1913 also the present worth as of March 1, 1913 of the estimated royalties under the contracts in effect at that date. From these exhibits it will be seen that the royalties for the year 1912 and for the months of January and February, 1913 were

in excess of \$2,500.00 per month, whereas for the period March 1 to December 31, 1913 averaged \$5,480.00 per month. That the increase in excess of one hundred per cent was due to plants nearing completion at March 1, 1913 is readily seen. Under the contract with the Esperanza Consolidated Oil Company dated April 12, 1911 (sub-contracts No. 16 and No. 17) plants were under construction at Vernon and Mojave, California, such plants having a capacity of 20,000 and 10,000 barrels daily, respectively. (See Exhibit 'E'.) The royalties actually received from these plants were as follows:

Vernon—June to December, 1913	\$21,142.31
Mojave—August to December, 1913	14,826.15

“The plant at Warner, N. J. under contract (No. 11) with the Warner-Quinlan Asphaltum Company, commenced in November, 1912 completed in July, 1913, earned royalties of \$1,526.06 for the period August to December, 1913.

“From the foregoing it must be admitted that the royalties earned prior to March 1, 1913 could not be logically used as determinative of the value of the patents.

“From Exhibit 'B' it will be noted that the contracts in effect as of the basic date with plants in operation or under construction would show (based on seventy-five per cent efficiency of capacity operation for new plants and average for prior period on old plants, a present worth of royalties to be received over the life of the patents of \$1,361,527.83. This basis it is contended would be accepted in the negotiations between a willing seller and buyer, each having full knowledge of the facts.

“A comparison of Exhibits ‘B’ and ‘C’ shows the following:

Contract		Estimated Royalties	Actual Royalties
No.	Licensee	3/1/13—12/31/23	3/1/13—12/31/23
3	John R. Ott Contracting Co.	\$ 29,656.25	\$ 178.97
4	General Petroleum Corporation	4,500.00	1,460.47
6	General Petroleum Corporation	6,000.00	1,256.14
7	General Petroleum Corporation	14,828.12	4,898.61
9	General Petroleum Corporation	29,656.25	2,768.81
10	Santa Maria Oil Fields Company of California	79,083.33	14,272.49
11	Warner-Quinlan Asphaltum Co.	67,068.75	25,137.34
12	Pacific Crude Oil Company	127,461.00	.....
13	American Union Oil and Refining Company	49,427.01	292.60
16	General Petroleum Corporation	862,312.50	903,258.84
17	General Petroleum Corporation	431,156.25	145,462.13
		<u>\$1,701,149.46</u>	<u>\$1,098,986.40</u>

"In connection with the above, the following facts should be considered:

"Contracts No. 3 and No. 10. During the year 1913 the Jno. R. Ott Contracting Company was purchased by the Santa Maria Oil Fields Company of California and subsequent thereto the plant of the former at Los Angeles was used as a heating and distribution plant, and the manufacture of road oils was transferred to the Santa Maria plant at Cat Canyon.

"With the outbreaking of the World War in August, 1914 the demand for oil for road construction purposes fell off to a large extent, which condition caused the Santa Maria Company to curtail its drilling program as well as the manufacture of the oils for which the Trumble apparatus was used. This situation continued until the year 1922 when the condition was somewhat relieved and active operations gotten under way in 1923.

"Contracts No. 4, No. 6 and No. 7. These were all dehydrating plants installed under the contract of April, 1911 with the Esperanza Consolidated Oil Company (individual sub-contracts being made under the numbers shown). Due to the decline in production on these leases and the high costs for fuel in operating the plants the operations under these sub-contracts were curtailed to a large degree.

"Contract No. 9. This plant was operated until January, 1914, at which time the oil was turned into the pipe line to the Vernon Plant and the Kerto plant used as an asphaltum experimental station and entirely discontinued in that year.

“Contract No. 11. Due to war conditions the demand for road oils was to a large extent curtailed and in July, 1921 the plant was entirely destroyed by fire.

“Contract No. 12. After completion of its plant the Pacific Crude Oil Company accepted a proposal made by the Standard Oil Company for all of its production, the price offered being, we were informed, such as to preclude the operation by the company of its plant.

“Contract No. 13. Owing to financial difficulties the Licensee was unable to continue the operation of its properties.

“Contract No. 16. By reason of the decidedly low price of oil during the years 1914 and 1915 the Vernon Plant operations as well as production was curtailed.

“Contract No. 17. The operation of the Mojave Plant was discontinued in September, 1914. Due to the depression in the oil market and the increase in freight rates on gasoline, it was found prohibitive to distill at this interior point, and accordingly arrangements were made with the Santa Fe Railway for the delivery of heavy oils to them from the Midway and fuel oil from Los Angeles, and thereby enable the General Petroleum Company to discontinue the Mojave Plant. In 1918 a plant under this sub-contract was erected on the main pipe line to Los Angeles at Lebec.

“From the foregoing comparison it will be seen that for the period March 1, 1913 to December 31, 1923 the royalties received from the contracts in force on the basic date amounted to \$1,098,986.40 as against the estimated

\$1,701,149.46 and that such difference is attributable to conditions that would not be considered by either buyer or seller in the determination of a fair price to be received and paid for the patents.

“It is to be further noted that of the plants in operation at March 1, 1913 and the plants nearing completion six representing annual royalties on a conservative basis of \$128,993.75 were owned by the Esperanza Consolidated Oil Company and that under the contract of April 12, 1911 the licensee was obligated to use the Trumble process exclusively in its operations and in addition to do all things to further the interests of the Trumble Refining Company and that for the period March 1, 1913 to December 31, 1923, in spite of the unusual conditions existing due to the World War these six contracts earned royalties of \$1,059,105.00 as against estimated of \$1,348,453.12.

“In view of all the surrounding facts as set forth in the foregoing, it is respectfully urged that the minimum value that can be ascribed to the patents as of March 1, 1913 is the present worth of the royalties shown in Exhibit ‘B’, \$1,361,527.83, reduced by the administrative and operating expenses for the term of such patents.

“There is submitted herewith as Exhibit ‘D’ a statement showing the operating expenses of the Trumble Refining Company for the period September 21, 1910 to De-

ember 31, 1923 also estimated expenses per annum from March 1, 1913 on the basis of the business already developed at that date.

“From Exhibit ‘D’ it will be seen that the estimated expenses, including depreciation, per annum was \$20,350.00 which amount for the remaining life of the patents (15-10/12 years) reduced to a present worth on an eight per cent basis amounts to \$218,904.05, leaving a net minimum value of the patents of \$1,129,549.07 (\$1,348,453.12 less \$218,904.05).

“This it is contended is the minimum value that could be assigned to the patents on March 1, 1913 and that such value could be applied only to the patents as then licensed and does not include any provision whatsoever for future licenses to be secured thereunder.

“3. Segregation of value.

“The representatives of the Income Tax Unit advanced the contention that even though a depreciable value were established for the patents, it would be required that such value be divided as between the two patents and cited A. R. N. 35 as authority for such contention. The representative of the taxpayer insisted that such segregation was required where many patents of varying expirations were involved and not in cases similar to that of this company, where only two patents closely allied as to use and expiration were involved. This position taken by the taxpayer’s representative is believed to be logical and in accord with the intent of the Committee, and it is requested that the Unit’s decision on this point be reversed.

“EXHIBIT ‘A’

STATE OF CALIFORNIA)
) SS
 COUNTY OF LOS ANGELES)

“F. M. Townsend, A. J. Gutzler, and M. J. Trumble first duly sworn, depose and say:

“That at all times from July 10, 1910 they have been managing officers or directors of the Trumble Refining Company of Arizona.

“That during the years 1913, 1914 and the early part of the year 1915 the said deponents were in negotiation with representatives of the Royal Dutch Shell Company.

“That the said negotiations were for the most part looking to the use of the Trumble apparatus and process by said company on a royalty basis.

“That in December, 1914 the said F. M. Townsend and A. J. Gutzler met with Mr. W. Meischke Smith (the representative of the said Royal Dutch Shell Company) for the purpose of entering into an agreement which would more closely bind the interests of the Trumble Refining Company and the Royal Dutch Shell Company.

“That at this conference Mr. Smith, after considerable discussion of the purchase and royalty basis, stated that his company would prefer not to operate on a stated royalty, but would prefer an arrangement whereby they could use the apparatus and process at will in the refineries operated by them.

“That after further discussion Mr. Smith stated he would take the matter up further with the London office of his company and arrange to come to Los Angeles in February, 1915.

“That Mr. Smith arrived in Los Angeles about the fifteenth of March, 1915 and negotiations were re-opened along the lines had in San Francisco, he insisting that the Trumble Refining Company make a flat price for the unlimited use by the Royal Dutch Shell Company of the apparatus and process in any of the countries in which said company operated; that said deponents made such a proposal for \$1,000,000.00.

“That after several days further negotiations the said Smith referred the matter to the London office of his company, and in a few days was advised to offer the Trumble Refining Company the sum of one million dollars for its total business, including patent rights in all countries of the world and the assignment of all license agreements then in force with other companies.

“That the said deponents declined this proposal, explaining that the business already developed was worth more than the money offered, as royalties for the previous year were nearly seven per cent on a million dollars. Mr. Smith was much surprised and said ‘If you people really earned that much money, I do not blame you for not wanting to sell at that price.’ He was shown that the Trumble Refining Company had earned in the previous year approximately \$69,000.00.

“That with the Shell Company plants to be in operation very shortly, these deponents could foresee that the earnings from these plants would on a royalty basis earn approximately \$150,000.00 per annum, and with this in mind the said deponents made a proposal to sell the Shell Company the patents, with the exception of those appertaining to the license agreements then in force with the other companies, and to release the Shell Company from its license agreements covering its Martinez, Island of Trinidad and Thames Haven Plants.

“That the offer of said deponents was referred by cable to the London Office and was accepted.

“That these deponents would not have consented to this sale, and, from their personal knowledge, state that the required two-thirds of the stockholders of the Trumble Refining Company would not have consented to the sale of the patent rights, without the reservation continuing the ownership of the rights under the licenses issued.

F. M. TOWNSEND

A. J. GUTZLER

M. J. TRUMBLE

Subscribed and sworn to before me this 28th day of April, 1924.

(SEAL)

PEARL TRALLE

Notary Public in and for the County of Los Angeles,
State of California.

"EXHIBIT B-1

TRUMBLE REFINING COMPANY OF ARIZONA

CONTRACTS HELD AS OF MARCH 1, 1913, AND PRESENT WORTH OF ROYALTIES AS OF THAT DATE

	CONTRACT NUMBER											
	3	4	6	7	9	10	11	12	13	16	17	
Licensee	Jno. R. Ott Contracting Company	General Petroleum Corporation	General Petroleum Corporation	General Petroleum Corporation	General Petroleum Corporation	General Petroleum Corporation	Santa Maria Oil Fields of Cal.	Warner-Quinlan Asphaltum Co.	Pacific Crude Oil Company	American Union Oil & Refining Co.	General Petroleum Corporation	General Petroleum Corporation
Date of license	Feb. 15, 1912	Apr. 12, 1911	Apr. 12, 1911	Apr. 12, 1911	Apr. 12, 1911	Apr. 12, 1911	Sept. 28, 1912	Oct. 26, 1912	Nov. 30, 1912	Jan. 8, 1913	Apr. 12, 1911	Apr. 12, 1911
Patents licensed	996,736 1,002,474	996,736	996,736	996,736	996,736	996,736 1,002,474	996,736	996,736 1,002,474	996,736	996,736 1,002,474	996,736 1,002,474	996,736 1,002,474
Plant location	Los Angeles	Sibyl lease	Nevada-Midway	Olinda Delaware Union	Kerto Aug. 1912	Cat Canyon	Warner N. J.	Fellows	Tulare	Vernon	Mojave	
Plant erected	Nov. 1911	July 1912	July 1912	Sept. 1912	Aug. 1912	Dec. 1912	Nov. 1912-June 1913	Dec. 1912-Mar. 1913	Feb. 1913	May 15, 1913	July 1913	
Plant capacity in bbls per annum	365,000	182,500	365,000	273,750	365,000	730,000	730,000	1,825,000	365,000	7,300,000	3,650,000	
Estimated oil run per annum	54,750	50,000	120,000	136,875	182,500	365,000	365,000	941,250	182,500	5,475,000	2,737,500	
Royalty per barrel	5¢	1¢	1¢	1¢	1-½¢	2¢	1-¾¢	1-¼¢	2-½¢	1-½¢	1-¼¢	
Estimated royalty per annum	\$ 2,737.50	\$ 500.00	\$ 1,200.00	\$ 1,368.75	\$ 2,737.50	\$ 7,300.00	\$ 6,387.50	\$ 11,765.63	\$ 4,562.50	\$ 82,125.00	\$ 41,062.50	
Life of license, in years from March 1, 1913	15-1/2	10	5	15-1/3	15-1/2	15-1/3	15-1/2	15-1/3	15-1/2	15-1/2	15-1/2	

PRESENT WORTH OF ROYALTIES ON 8% BASIS:

1913	\$ 2,566.41	\$ 468.75	\$ 1,125.00	\$ 1,283.20	\$ 1,710.94	\$ 6,843.75	\$ 2,994.14	\$ 8,272.90	\$ 2,138.67	\$ 38,496.09	\$ 19,248.05	
1914	2,376.30	434.03	1,041.67	1,188.15	1,584.20	6,336.81	5,544.70	10,213.22	3,960.50	71,289.06	35,644.53	
1915	2,200.28	401.88	964.51	1,100.14	1,466.85	5,867.41	5,133.99	9,456.69	3,667.13	66,008.39	33,004.19	
1916	2,037.30	372.11	893.06	1,018.65	1,358.20	5,432.79	4,753.69	8,756.19	3,395.49	61,118.87	30,559.44	
1917	1,886.38	344.55	697.70	943.19	1,257.59	5,030.36	4,401.56	8,107.58	3,143.97	56,591.54	28,295.77	
1918	1,746.65	319.02		873.33	1,164.43	4,657.74	4,075.52	7,507.02	2,911.09	52,399.57	26,199.78	
1919	1,617.27	295.39		808.64	1,078.18	4,312.72	3,773.63	6,950.94	2,695.45	48,518.11	24,259.06	
1920	1,497.47	273.51		748.74	998.31	3,993.26	3,494.10	6,436.06	2,495.79	44,924.17	22,462.09	
1921	1,386.55	253.25		693.27	924.37	3,697.46	3,235.28	5,959.31	2,310.91	41,596.45	20,798.23	
1922	1,283.84			641.92	855.89	3,423.58	2,995.63	5,517.88	2,139.73	38,515.23	19,257.61	
1923	1,188.74			594.37	792.49	3,169.98	2,773.73	5,109.15	1,981.24	35,662.25	17,831.12	
1924	1,100.69			550.34	733.79	2,935.16	2,568.27	4,730.69	1,834.48	33,020.60	16,510.30	
1925	1,019.15			509.58	679.44	2,117.74	2,378.03	4,380.27	1,698.59	30,574.62	15,287.31	
1926	943.66			471.83	629.11	2,516.43	2,201.88	4,055.80	1,572.77	28,309.83	14,154.91	
1927	873.76			436.88	582.51	2,330.03	2,038.77	3,755.37	1,456.27	26,212.80	13,106.40	
1928	420.08			141.84	280.05	756.50	980.18	1,219.28	700.13	12,602.31	6,301.15	
TOTAL	\$1,344,184.59	\$24,144.53	\$ 3,162.49	\$ 4,721.94	\$12,004.07	\$16,096.35	\$63,421.72	\$53,343.10	\$100,428.35	\$38,102.21	\$685,839.89	\$342,919.94

"EXHIBIT B-2

CONTRACTS HELD AS OF MARCH 1, 1913, OPERATIONS UNDER WHICH WERE SUSPENDED

	CONTRACT NUMBER					
	1	2	5	8	14	15
Licensee	Petroleum Development Company	Coalinga National Oil Company	Recovery Oil Company	General Petroleum Corporation	Santa Maria Oil Fields of Cal.	General Petroleum Corporation
Date of license	Sept. 27, 1910	July 10, 1911	Mar. 18, 1912	Apr. 12, 1911	Feb. 8, 1913	Apr. 12, 1911
Patents licensed	996,736	996,736	996,736	996,736	996,736 1,002,474	996,736 1,002,474
Plant location	Fellows	Coalinga	Fellows	Brea Canyon	Cat Canyon	Kerto
Plant erected	Jan. 1911	July 1911	July 1912	Sept. 1912		Jan. 29, 1913
Plant capacity in bbls. per annum	3,285,000	365,000	365,000	273,750	Extension of #10	Extension of #9
Estimated oil run per annum	2,463,750					
Royalty per bbl.	1- $\frac{1}{2}$ ¢	2¢				
Estimated royalty per annum	\$36,956.25					
Life of license, in years, from March 1, 1913	15-1/3	15-1/3	12	15-1/3		
Estimated Royalties 1913 (6 mo.)	\$17,343.24					

"EXHIBIT C

TRUMBLE REFINING COMPANY OF ARIZONAROYALTIES RECEIVED UNDER CONTRACTS IN FORCE MARCH 1, 1913

	#1	#2	#4	#5	#6	#7	#8	#9	#3 & #10	#11	#13	#16	#17	Total
9/21/10 to														
12/31/11	\$20,548.46	\$ 207.13	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$ 20,755.59
1912	24,879.62	2,469.10	576.02	610.00	612.06	484.48	790.06	1,043.34						31,464.68
1/1—3/1/ 1913	4,201.18		96.57		136.95	501.49		62.44	#3 162.05					5,160.68
3/1—12/31/ 1913	11,976.41		357.48		322.04	2,279.81		666.01	#3 178.97	1,526.06				54,808.94
1914					368.04	1,185.09		2,102.80	1,310.15 2,017.75	5,039.61	69.05	32,941.20	25,040.93	68,764.47
1915			281.44		289.40	703.66			2,681.71	5,152.80		39,578.04		48,687.05
1916			278.41		213.39	673.65			1,667.33	5,031.75		82,704.92		90,569.45
1917			273.90		63.27	56.40			995.70	2,106.70		90,050.81		93,546.78
1918			150.18						932.43	2,089.31		75,842.11		79,014.03
1919			90.54						349.95	2,151.68		73,235.00	8,342.52	84,169.69
1920			28.52							1,350.96		76,895.21	31,819.44	110,094.13
1921									515.75	608.47		96,799.56	24,593.43	122,517.21
1922									1,775.42	80.00		149,819.68	13,622.97	165,298.07
1923									2,026.30			164,250.00	27,216.69	193,492.99
	\$61,605.67	\$2,676.23	\$2,133.06	\$610.00	\$2,005.15	\$5,884.58	\$790.06	\$3,874.59	\$14,613.51	\$25,137.34	\$292.60	\$903,258.84	\$145,462.13	\$1,168,343.76

"EXHIBIT D

TRUMBLE REFINING COMPANY OF ARIZONAEXPENSES INCURRED FOR THE PERIOD SEPTEMBER 21, 1910 TO DECEMBER 31, 1923, AND ESTIMATED EXPENSES PER ANNUM FROM MARCH 1, 1913

Year	Commissions	Consulting fees	Salaries	Traveling Expenses	Apparatus Rent	Depreciation	Development	Miscellaneous Expenses	Taxes and Licenses	Prof. & Legal	Total	Income Taxes	Plant Invest.
<u>Expenses Incurred</u>													
9/21/10 to 12/31/11	\$5,137.11	\$1,680.00	\$ 3,522.00	\$1,714.95	\$ 321.25	\$	\$	\$ 693.86	\$ 37.70	\$	\$13,106.87	\$	\$
1912	6,219.89	1,400.00	9,173.67	1,822.38	755.00			1,409.23	131.33		20,911.50		11,146.91
1913	3,825.73	1,400.00	11,253.77	1,693.36	1,357.12	1,664.94		1,593.69	327.45		23,116.06		30,950.77
1914		1,400.00	12,966.02	1,262.70	1,372.00	8,619.29	11,625.42	1,686.47	785.09		39,716.99		29,629.25
1915		1,120.00	10,415.70	368.98	1,429.25	2,620.28	919.74	1,374.55	1,301.45	1,765.20	21,315.15		14,412.42
1916			4,890.50	107.35	1,145.00	1,801.76		806.68	3,924.66	282.50	12,958.45		12,573.20
1917			3,648.00		810.00	1,407.45		244.87	1,681.85	241.40	8,033.57	13,524.74	11,623.75
1918			10,998.00		500.00	1,320.36		465.13	830.69	150.00	14,264.18	1,325.03	10,303.39
1919			15,000.00		360.00	1,066.34		1,532.41	1,598.58	1,537.50	21,094.83	760.51	9,237.05
1920			15,000.00		327.00	1,026.34		763.89	1,072.20	424.25	18,613.78	5,730.59	8,210.71
1921			15,000.00		373.50	1,423.33		1,105.16	1,206.60	386.75	19,495.34	9,458.27	8,325.71
1922			15,000.00		409.50	1,324.76		1,372.18	1,251.97	1,195.88	20,554.29	11,327.79	8,325.71
1923			15,000.00		378.00			1,464.12		963.57			8,325.71
<u>Estimated Expenses</u>													
Per annum from March 1, 1913			15,000.00	600.00	1,200.00	2,000.00		1,200.00	350.00		20,350.00		

“EXHIBIT ‘E’

“STATE OF CALIFORNIA)
) SS
 CITY AND COUNTY OF SAN FRANCISCO)

“JOHN BARNESON, being first duly sworn, deposes and says:

“That he is a citizen of the United States of America, over twenty-one years of age, and competent to bear witness.

“That from May 16, 1910, and during all times herein mentioned he was vice-president and managing director of General Petroleum Company (originally called the Esperanza Consolidated Oil Company), and from 1916 to the present date the president of the General Petroleum Corporation (the successor to the General Petroleum Company).

“That during the period July, 1910 to April, 1911, he became interested in the patents held by the Trumble Refining Company and caused extensive investigations to be made of the process and apparatus covered by such patents.

“That the investigations made showed that with the use of the process and apparatus covered by the patents owned by the Trumble Refining Company great economies could be effected in the refinery costs and operations of this company.

“The deponent entered into negotiations with the Trumble Refining Company for the use of such process and

apparatus in the operations of the Esperanza Consolidated Oil Company.

“That at the time of such negotiations the Esperanza Consolidated Oil Company planned the construction of a refinery at Los Angeles, California, and held as owner in fee and lessee producing oil properties with assured production to warrant the construction of pipe lines from the fields to the refinery site; and in addition to such producing properties were the owners of a large known oil territory; and that said production was at that time approximately 15,000 barrels per day, and with the drilling program would be rapidly increased.

“That as a result of such negotiations on April 12, 1911, the Esperanza Consolidated Oil Company entered into an agreement with the Trumble Refining Company and Milon J. Trumble, Francis M. Townsend, A. J. Gutzler and John Randolph (the principal stockholders of the Trumble Refining Company) whereby in consideration of the covenants on the part of the Esperanza Consolidated Oil Company to use the patented process and apparatus exclusively in its operations and to do everything in its power to further the interests of the Refining Company, one-half of the stock of the Refining Company would be transferred to the Oil Company at a nominal consideration.

“That upon execution of the agreement aforesaid, the Oil Company proceeded to have small plants embodying the apparatus for the use of such process erected at different locations in the field until such time as the Los Angeles plant and pipe lines thereto would be constructed and in operation.

“That such apparatus was installed and put in operation in plants in the field as follows:

July, 1912

Sibyl Lease capacity 182,500 barrels per annum.

July, 1912

Nevada Midway “ 365,000 “ “ “

Sept. 1912

Olinda-Delaware
Union “ 273,750 “ “ “

Aug. 1912

Kerto “ 365,000 “ “ “

Dec. 1912

Cat Canyon “ 730,000 “ “ “

“That the contract for the construction of the pipe line to Los Angeles was signed on March 7, 1912, and the line completed early in 1913.

“That the construction of the plant at Los Angeles was begun in 1912 and such plant completed and placed in operation with a capacity of 20,000 barrels per day in May, 1913.

“That at the time construction was under way, the Esperanza Consolidated Oil Company controlled production to be served by the pipe line more than sufficient oil to keep such plant in capacity operation; without taking into consideration undeveloped known oil properties; and that such supply of oil was assured for in excess of the life of the patents covering the Trumble process and apparatus.

“That this deponent is informed that in connection with the valuation of its patents the Trumble Refining Company has been informed by representatives of the Treasury Department that the royalties received prior to the operations of 1913 would only be considered. Such a position in the opinion of this deponent is untenable, as the royalties to accrue from the operations of the Los Angeles plant were assured at the date of valuation, which this deponent understands to be March 1, 1913, as well as the royalties from the Mojave plant which was arranged for in about December, 1912, and completed in 1913 with a capacity of 10,000 barrels per day.

“TRUMBLE REFINING COMPANY OF ARIZONA
804 Higgins Building,
Los Angeles, California.

JURAT

“F. M. Townsend, being duly sworn, deposes and says that he is the president of the Trumble Refining Company of Arizona, that he has read the foregoing brief, and that the facts contained therein are true and correct to the best of his knowledge and belief.

F. M. TOWNSEND

Subscribed and sworn to before me this 29th day of April, nineteen hundred and twenty-four.

PEARL TROLLE
Notary Public.”

(Testimony of E. P. Adams)

CROSS EXAMINATION

by Mr. Harpole:

I was with Haskins & Sells from November, 1920 until October, 1923 and during that time did some work for the Trumble Refining Company in connection with its income and excess profits tax for the year 1917. After leaving Haskins & Sells I carried on work for the Trumble Refining Company until 1926.

I don't recall that I ever informed Trumble Refining Company that their claim for refund filed on the 2nd day of July, 1920 had been reopened by the Commissioner of Internal Revenue because I was handling the case from the beginning and I was fighting it as hard as I could, naturally. Of course, they knew nothing of taxes. I did not file the claim for refund on July 2, 1920. I was in Washington at that time, working for the Government as Section Unit Auditor under Corporation Section, Income Tax Division. My connection with the Government ceased in October, 1920.

I do not know what division of the Commissioner's office was charged with the duty of reopening or rejecting claims for refund in 1920, or at any later date. I know nothing about a section of the Bureau of Internal Revenue called "Claims Control Section". I had a conference on December 9, 1922 with a man who was in charge of the Special Audit Section. My understanding was that the function of the Special Audit Section was the handling of 210 cases—that is, special assessment cases. I made no endeavor to have the case of Trumble Refining Company transferred from the Special Assessment Section to any other section.

(Testimony of E. P. Adams)

EXAMINATION BY THE COURT

I had a conference with an auditor in the 210 Section, also known as the Special Assessment Section, on December 9, 1922. I can get it clear. I was in Washington on other cases along with the Trumble case and I went and found where this Trumble case was to be assigned and it was forwarded to this gentleman. I asked him if we could take up that case, referring to the 1917, 1918, 1919 and 1920, all in one. In other words, this brief has been filed in February. And he informed me that they had not reached the review of the Revenue Agent's report and my protest filed in Washington and, therefore, could not take it up at that time. We discussed it along as to the points involved and I said "Well, we will take the 1917 claim and all the rest, and take them all up together."

He said, "Yes."

CROSS EXAMINATION

resumed by Mr. Harpole:

I did not acquiesce in the application of the provision of the Special Assessment Section to the computation of the tax of the Trumble Refining Company for the year 1917 and subsequent years. I protested it when I visited the Capital in February, 1922, claiming invested capital on the basis paid in for stock. I used "invested capital" all the way through my protest. I, frankly, don't understand you when you ask whether I protested the use of special assessment in computing the tax or only protested the amount of invested capital used in applying special assessment.

I did not prepare the claim for abatement that was filed in June, 1920. I filed no protest to the letter of

(Testimony of E. P. Adams)

February 21, 1920. I do not recall that I ever discussed the letter of February 21, 1920 and its proposal with any one in the Bureau of Internal Revenue because this same thing was covered by the protest of February, 1922, protesting to any additional assessments based on the fact of asking refunds by using invested capital. This letter was before my time, and I don't recall having discussed that with any one. Naturally, the Trumble Refining Company requested me to take up the matter covered by this letter. I was entrusted with the taking up of the entire case from 1917 on, starting with the refund claim of 1917, right on, with the Revenue Agent's report.

I do not recall the name of the man with whom I held this conference in the Special Audit Section. Only he and I were present. At the time of the conference on December 9, 1922 I discussed the Revenue Agent's report covering the years 1917 to 1919, inclusive.

At the conference in May, 1924 Mr. McGinley, representative of the Commissioner, Mr. Townsend, the president of the company, and myself were present.

I next had a conference in November, 1923 following the one on December 9, 1922. There was correspondence in the interim, but the files cannot be located.

The witness E. P. Adams was then excused.

It was then stipulated by counsel in open Court that:

"The Commissioner of Internal Revenue, on November 6, 1924, issued notices of deficiencies for the years 1918, 1919 and 1920 to the Trumble Refining Company, wherein he proposed additional taxes; and that within the sixty-day period provided in the Statute, and in the letter, the Trumble Refining Company appealed to the United States Board of Tax Appeals."

Thereupon counsel for the plaintiffs introduced in evidence as plaintiffs' Exhibit 5 the following decision of the United States Board of Tax Appeals:

PLAINTIFFS' EXHIBIT 5

“UNITED STATES BOARD OF TAX APPEALS.

M. J. TRUMBLE, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

A. J. GUTZLER, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

FRANCIS M. TOWNSEND, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent,

TRUMBLE REFINING COMPANY OF ARIZONA, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

DOCKET NOS. 8007, 8008, 8009, 11763, 17492, 26434, 28985 and 32151. Promulgated November 19, 1928.

A composite March 1, 1913 value determined for license contracts.

A. L. Weil, Esq., and F. L. A. Graham, C. P. A., for the petitioner.

C. H. Curl, Esq., and I. R. Blaisdell, Esq., for the respondent.

“In these proceedings, which were consolidated for trial, the petitioners seek redeterminations of the deficiencies which respondent has asserted for the years and in amounts as follows:

<u>Petitioner</u>	<u>Docket No.</u>	<u>Year</u>	<u>Deficiency</u>
M. J. Trumble	8007	1918	\$ 8.76
		1919	444.65
		1920	847.33
	28985	1922	2,513.68
A. J. Gutzler	8008	1918	49.98
		1919	415.98
		1920	697.91
Francis M. Townsend	8009	1918	31.58
		1919	424.41
		1920	584.31
Trumble Refining Company of Arizona	11763	1918	25,150.19
	17492	1920	26,604.39
		1921	28,885.12
	26434	1922	5,431.85
	32151	1923	5,431.85

“In Docket Nos. 8007, 8008, 8009 and 28985, the petitioners allege error in respondent’s action in holding that distributions made to them by the Trumble Refining Company were ordinary dividends subject to tax. Further allegations of error were made in Docket Nos. 8007, 8008

and 8009, but these were withdrawn at the hearing of April 22, 1927, and before the proceedings came on for trial on the merits. In Docket No. 28985, it is also alleged that respondent erred in disallowing \$600.00 of a total deduction of \$1,200.00 claimed as expense of operating an automobile for business purposes. In Docket Nos. 11763, 17492, 26434 and 32151, the sole question raised is the value of certain license contracts at March 1, 1913, for the purpose of computing the annual deduction for exhaustion. In an amended answer to the petitions in the last mentioned cases, respondent alleges that he erred in fixing the value of the license contracts, as of March 1, 1913, at \$160,000.00; and that said contracts had no value at March 1, 1913, which could be made the subject of an allowance for exhaustion.

“FINDINGS OF FACT.

DOCKET Nos. 8007, 8008, 8009 and 28985.

“M. J. Trumble, A. J. Gutzler, and Francis M. Townsend are citizens of the United States and residents of California.

“During the years in controversy, these petitioners received certain moneys by way of distributions made by the Trumble Refining Company. Respondent has held that said distributions constituted ordinary dividends, and are so taxable to the petitioner.

“In his return for 1922, M. J. Trumble, Docket No. 28985, claimed a deduction of \$1,200.00, as the expense of operating an automobile for business purposes. Respondent disallowed one-half the deduction claimed, to-wit: \$600.00, on the ground that the automobile was used only ‘50 per cent of the time’ for business purposes.

Docket Nos. 11763, 17492, 26434 and 32151

“The Trumble Refining Company of Arizona is an Arizona corporation with its principal office at Los Angeles, California.

“On April 12, 1911, the Trumble Refining Company and its stockholders, Milon J. Trumble, Francis M. Townsend, A. J. Gutzler and John H. Randolph, entered into an agreement with the Esperanza Consolidated Oil Company (name changed in 1912 by court decree to General Petroleum Company), which had for its purpose the acquisition by the Oil Company of an interest, through the purchase of stock in the Refining Company. Under its terms, the Refining Company sold 200,000 shares of its preferred and 800,000 shares of its common capital stock to the Oil Company for \$25,000.00 cash, and the stockholders sold 200,000 shares of common and 800,000 shares of preferred capital stock of the Refining Company to the Oil Company for \$50,000.00 cash. The agreement recites that at the date thereof the authorized capital stock of the Refining Company consisted of 1,000,000 shares of preferred and 4,000,000 shares of common, all of the par value of \$1.00 per share, of which there was outstanding 600,000 shares of preferred and 2,400,000 of common. The agreement reads in part as follows:

“WHEREAS, according to the representations made by the Refining Company, the Stockholders and the Inventor to the Oil Company, the Inventor has invented valuable machines, apparatus and processes for the evaporation and refining of petroleum and other oils and liquids and gas, and patents for the same have been issued, and applica-

tions for other patents for the same are now pending, and the Inventor has assigned the same to the Refining Company, and contemplates and intends to assign to the Company further improvements and processes, in any manner relating to the same, which may from time to time hereafter be invented by him; and

“WHEREAS, it is deemed by the Refining Company to be for the advantage of the Refining Company that the Oil Company shall become a stockholder in the Refining Company, relying on the representations made to the Refining Company by the Oil Company that the Oil Company will aid and assist the Refining Company in pushing the business of the Refining Company and will do everything in its power to further the interests of the Refining Company; and

“WHEREAS, as a further consideration for the sale of the stock agreed to be sold to the Oil Company by the Stockholders at the price and at the time hereinafter provided, it is deemed by the Stockholders to be for the advantage of the Stockholders that the Oil Company shall become a stockholder in the Refining Company, relying on the representations made to the Stockholders by the Oil Company that the Oil Company will aid and assist the Refining Company in pushing the business of the Refining Company and will do everything in its power to further the interests of the Refining Company; and

“WHEREAS, the Oil Company, relying upon the representations made to it, as hereinabove stated, deems it to be for its advantage to become interested in the Refining Company as a stockholder thereof.

“During the negotiations which resulted in the aforementioned agreement, the representatives of the Oil Company orally represented to the representatives of the Refining Company that the Oil Company was entering upon the development of a large acreage of new oil land and into the field of refining crude oil; that it was building a pipe line to deliver 30,000 barrels of oil a day at Los Angeles or in the vicinity thereof; that in its operations a very large use would be made of the apparatuses and processes covered by the patents of the Refining Company, which the Oil Company would use exclusively; and that license agreements for the use of such apparatuses and processes by the individual refining plants would be obtained as such plants were erected. The purchase prices stipulated in the agreement to be paid by the Oil Company to the Refining Company and its stockholders for the capital stock acquired from them were fixed after due consideration of these oral representations and were based largely thereon.

“Under dates of July 4, 1911 and September 5, 1911, there were issued to Milon J. Trumble, United States letters patent Nos. 996,736 and 1,002,474, respectively. The first mentioned patent covered the invention of an evaporator for petroleum oils or other liquids, and the later patent covered the invention of an apparatus for refining petroleums. In 1911, these patents were assigned by Trumble to the Trumble Refining Company. The following is a brief resume of license agreements entered into by the Trumble Refining Company with other companies, between September 27, 1910 and June 11, 1913:

	Date of Agreement	Licensed Under Patent No.	Term of Agreement	Royalty
1. Petroleum Development Company	Sept. 27, 1910	553,656	Life of patent	\$.03 per bbl.
2. Coalinga National Oil Company	July 10, 1911	996,736	" " "	.02 " "
3. John R. Ott Contracting Company	Feb. 15, 1912	996,736) 1,002,474)	" " "	.05 " "
4. General Petroleum Company (Sibyl Lease-Taft)	Mar. 15, 1912	996,736	10 years	.01 " "
5. Recovery Oil Company	Mar. 18, 1912	996,736	2 "	.01 " "
6. General Petroleum Co. (Nevada-Midway)	May 15, 1912	996,736	5 "	.01 " "
7. " " " (Olinda)	June 26, 1912	996,736	2 "	.01 " "
8. " " " (Brea Canyon)	June 26, 1912	996,736	2 "	.01 " "
9. " " " (Kerto, Taft)	Aug. 28, 1912	996,736 1,002,474)	Life of Patent	.01-1/2 per bbl.
10. Santa Maria Oil Fields of California, Limited	Sept. 28, 1912	996,736	Not stated	.02 per bbl.
11. Warner Quinlan Asphaltum Company	Oct. 26, 1912	996,736) 1,002,474)	" " "	(.02 " " *
			" " "	(.01-1/2 per bbl. **
12. Pacific Crude Oil Company	Nov. 30, 1912	996,736	Life of Patent	.01-3/4 " "
13. American Union Oil & Refining Company	Jan. 8, 1913	996,736) 1,002,474)	" " "	(.02-1/2 " " #
			" " "	(.01-1/2 " " ##
14. Santa Maria Oil Fields of California, Limited	Feb. 8, 1913	1,002,474	Not stated	.00-1/2 " "
15. General Petroleum Co. (Los Angeles)	June 11, 1913	996,736) 1,002,474)	Life of Patent	.01-1/2 " "
16. General Petroleum Co. (Mojave)	June 11, 1913	996,736(1,002,474(	Life of Patent	.01-1/2 " "

*For Grade D Asphaltum.

**For asphaltum oils for road making purposes.

#For 4 refined cuts.

##For 2 refined cuts.

“In 1915, the Trumble Refining Company sold its patents to W. Meischke-Smith for \$1,000,000.00 cash, the Company reserving to itself however, all rights under the above listed license agreements and all royalties which might thereafter accrue under those agreements.

“The Petroleum Development Company has been merged with the Chancellor-Canfield Midway Oil Company, a subsidiary of the Atcheson, Topeka and Santa Fe Railway Company. The Income Tax Unit of the Bureau of Internal Revenue has determined the net oil reserves of the Chancellor-Canfield Midway Oil Company as of March 1, 1913, to have been 55,519,171 barrels.

“At March 1, 1913, the General Petroleum Company held, in fee, under lease, and under contract, 23,694.04 acres of land in California, and held under lease 24,493.68 acres in the Republic of Mexico. These lands were being developed as rapidly as possible, and on the date stated there were 160 producing wells on the California lands, six more wells were being brought in, and twenty-six additional wells were being drilled. From the Midway Fields to Los Angeles there had been constructed 158 miles of pipe lines. Construction of a spur at Mojave, California, of a refinery at Kerville, in the Midway Field, and of a refinery, with a capacity of approximately 20,000 barrels per day, at Vernon, had been completed, and a 20,000 barrel refinery was in course of construction at Mojave. The company owned four 10,000 ton ships, and had ar-

ranged through Andrew Weir, who held a large interest in the company and was also a large ship-owner in England, for charters of other ships. The company had approximately 202,000 barrels of oil in storage, and was producing about 8,500 barrels per day from its own wells and handling an additional 7,000 barrels per day under purchase contracts.

“In 1923, the Income Tax Unit of the Bureau of Internal Revenue, determined that at July 11, 1916, the net oil reserves in the lands held by the General Petroleum Company on March 1, 1913, amounted to 32,896,058 barrels. In arriving at the net reserves, the Income Tax Unit deducted royalty oils of 3,789,004 barrels. Between March 1, 1913 and July 11, 1916, there were extracted from these same lands 13,314,841 barrels of oil.

“The following is a statement of the total capacity, based upon the patented facilities in use and in course of construction at March 1, 1913, of each of the licensee’s plants, from March 1, 1913 to the termination of their respective agreements, the number of barrels of oil actually treated by each of the licensees between March 1, 1913 and January 1, 1928, and the royalties earned between those same dates:

	Total capacity Barrels	Oil actually treated Barrels	Royalties earned
1. Petroleum Development Co.	50,640,875	3,601,622	\$ 61,605.77
2. Coalinga National Oil		10,357	207.13
3. John R. Ott Contracting Co.			
4. General Petroleum Co. (Sibyl Lease, Taft)	730,000	244,990	2,449.90
5. Recovery Oil Company		61,000	610.00
6. General Petroleum Co. (Nevada-Midway)	1,825,000	200,515	2,005.15
7. General Petroleum Co. (Olinda)	1,368,750	588,458	5,884.58
8. General Petroleum Co. (Brea Canyon)		79,006	790.06
9. General Petroleum Co. (Kerto, Taft)	5,884,000	253,041	3,874.59
10. Santa Maria Oil Fields of Calif., Ltd.	11,680,000	1,097,638	25,614.80
11. Warner Quinlan Asphaltum Co.	11,315,000	1,366,990	25,137.34
12. Pacific Crude Oil Company	23,297,000		
13. American Union Oil & Refin- ing Company	5,657,500	9,632	292.60
14. Santa Maria Oil Fields of Calif., Ltd.			
15. General Petroleum Co. (Los Angeles)	109,500,000	129,045,113	1,935,676.69
16. General Petroleum Co. (Mojave)	54,750,000	21,294,225	226,231.23
Totals	281,648,625	157,852,587	\$2,290,379.84

"The agreements with the General Petroleum Company of August 28, 1912, with the Santa Maria Oil Fields of California, Limited, of September 28, 1912, with the Pacific Crude Oil Company of November 30, 1912, with the American Union Oil & Refining Company of January 8, 1913, and with the General Petroleum Company of June 11, 1913, being the agreements numbered above 9, 10, 12, 13, 15 and 16, provide that the licensees shall use the patented apparatus of the Trumble Refining Company to the exclusion of all other methods and processes for treating oils.

"In February, 1913, Francis M. Townsend, president of the Trumble Refining Company, sold 1,000 shares of the common capital stock of that company for \$500.00 to A. L. Weil, a director of the company and general counsel of the General Petroleum Company. At March 1, 1913, the outstanding capital stock of the Trumble Refining Company was 800,000 shares of preferred and 3,200,000 shares of common, all of the par value of \$1.00 per share.

"Respondent has fixed the value of these license agreements, as of March 1, 1913, at \$160,000.00 and, in computing net income of the Trumble Refining Company for the years on appeal, has allowed an annual deduction for exhaustion of the agreements based upon that value.

"OPINION

"MILLIKEN: The issues raised in Docket Nos. 8007, 8008, 8009 and 28985 will be disposed of first. These petitioners complain of respondent's action in including in net income of the years in controversy as ordinary dividends subject to the tax, the entire amounts received in those years as distributions from the Trumble Refining

Company of Arizona. It is contended that a portion, if not all, of such distributions were in fact liquidating dividends or a return of capital not subject to tax. The allegations of the petitions are specifically denied by the respondent in his answers. No evidence was offered by the petitioners in support of those allegations. Under the circumstances, we may not disturb the action of the respondent of which petitioners complain.

“In the case of M. J. Trumble, Docket No. 28985, it is further alleged that respondent erred in disallowing \$600.00 of a total deduction of \$1,200.00 claimed in the return for 1922, as expense of operating an automobile for business purposes. No evidence was offered by the petitioner in support of the material averments of his petition. We are unable, therefore, to find error in respondent’s action.

“In the appeals of the Trumble Refining Company of Arizona, Docket Nos. 11763, 17492, 26434 and 32151, the sole question raised is the value of certain license contracts at March 1, 1913, for the purpose of computing the annual deduction for exhaustion. The petitioner claims a total value for these contracts at March 1, 1913, of \$1,400,000.00. The respondent has computed the annual deductions for exhaustion upon the basis of a March 1, 1913 value for the contracts of \$160,000.00. In an amended answer respondent alleges error in the value previously determined by him, and asserts that they were without any value at the basic date, which might be made the subject of an allowance for exhaustion.

“We are not certain of the position of the respondent in this proceeding. At the hearing, counsel filed an amended answer alleging error in allowing a March 1, 1913 value for the contracts of \$160,000.00 and that the contracts had no value as of March 1, 1913, which was

or is subject to exhaustion allowances under the Revenue Acts of 1918 and 1921. We will proceed upon the understanding that only a question of fact is involved, i.e., the March 1, 1913, value of the contracts in question. Counsel for respondent in brief filed does not contest the legal right to an exhaustion allowance if the contracts did in fact have an ascertainable value on March 1, 1913, or the long line of Board decisions wherein allowances have been claimed before and allowed by us.

“Petitioner has offered proof of the value claimed for the contracts along three lines:—First, evidence as to a certain transaction which occurred in February, 1913, in which 1,000 shares of its common capital stock was exchanged between two individuals for a cash consideration; secondly, evidence of existing circumstances and conditions, at March 1, 1913, as the basis of prognosticating the future earnings under these agreements; and thirdly, the actual results obtained under these contracts to the beginning of the present year.

“The stock transaction referred to is that in which Francis M. Townsend, president of petitioner company, sold to A. L. Weil, a director of petitioner and general counsel of the General Petroleum Company, in February, 1913, 1,000 shares of petitioner’s common capital stock for \$500.00 cash. The petitioner relies upon this transaction as establishing a value of fifty cents per share for the entire 3,200,000 shares of common stock outstanding at March 1, 1913, and then reasons that ‘If the common stock had a value of fifty cents a share, the preferred shares were necessarily worth par (\$800,000.00), and, therefore, the value of the outstanding stock at the time of the sale, which was just prior to March 1, 1913, was \$2,400,000.00’. From this sum, the petitioner deducts

\$1,000,000.00, the selling price of the patents in 1915, leaving \$1,400,000.00 which it claims represents the March 1, 1913 value of the rights under the license contracts. The obstacles to accepting this line of reasoning or method of valuation are insurmountable, for the reasoning or method lacks the support of proven facts and takes too much for granted. The stock involved in this transaction was but one thirty-second of one per cent of the common stock, and only one-fortieth of one per cent of all the stock, outstanding at the basic date. To conclude that the selling price of this negligible quantity of stock fixes the fair market value of all the stock, both common and preferred, notwithstanding the utter lack of proof in that direction, requires the indulgence in assumptions as to diverse factors affecting the marketability of 4,000,000 shares of stock and the rights of preferred shareholders, which we are unwilling to make. The method requires the further assumptions, wholly without proof of facts upon which to premise them, that the March 1, 1913 value of the patents was neither greater nor less than the selling price in 1915, and that the petitioner, though apparently manufacturing all of the patented apparatus for its licensees, had no assets of value, other than the patents and license contracts. Further, it is a matter of common knowledge that the selling price or fair market value of the capital stock of a corporation frequently bears no relation to, and is not a reliable index of, the intrinsic value of the assets behind it; and, for aught that we may know, this case offers no departure from such a situation.

“Other methods of valuing the rights under the license agreements, as of March 1, 1913, are suggested by the petitioner, but, like the first, they depend too greatly upon the most optimistic speculation and their bases lack the essential support of proven facts. One of these is based

upon the total number of barrels of oil which the licensees, with the facilities in use or in course of construction at March 1, 1913, would be able to treat between that date and the termination of their respective agreements, that is 281,648,625 barrels. The petitioner deducts from this number twenty-five per cent thereof to take care of probable losses from casualties, strikes, fires, and the risks of operation, and by pro rating the remainder, 211,236,469 barrels, amongst the sixteen agreements and applying the applicable royalty rates, it determines that the anticipated future earnings, at March 1, 1913, were \$3,208,222.03. This sum is then discounted to its present value, at March 1, 1913, by the application of Hoskold's formula, the petitioner finally arriving at a value of \$2,175,078.29. This method is offered to us with the suggestion that 'It is well known that refinery units are expensive to erect, and it cannot be presumed that parties will actually build plants that are larger than they have an economic use for'. Nevertheless, the record shows that the plants of the sixteen licensees were capable of treating a total of 281,648,625 barrels, between March 1, 1913 and the termination of their agreements, but that they actually treated up to January 1, 1928, only nine months prior to the expiration of the patents and termination of all agreements, only 157,852,587 barrels, just fifty-six per cent of their possible capacity; and, if we leave out of the reckoning the two plants of the General Petroleum Company, at Los Angeles and Mojave, which were not completed until after the basic date, we find that as against a total rated capacity, for the fourteen plants of the other licensees, of 117,398,625 barrels, those plants, with but nine months remaining for their agreements to run, actually treated only 7,513,249 barrels, just approximately seven per cent of possible production. It does not appear that this wide

difference between possible production and actual production is entirely due to the result of conditions which arose after March 1, 1913, and which could not have been foreseen at that date. In the case of the Pacific Crude Oil Company, the possible production with the facilities at hand at March 1, 1913, to the termination of its license agreement, amounted to 28,297,000 barrels, but the record shows that not a single barrel of oil was treated by this company to the beginning of 1928, although it was obligated under its agreement to use the petitioner's patented apparatus for the treatment of oil to the exclusion of all other methods and processes. The American Union Oil Company had facilities at March 1, 1913, capable of treating, from then to the termination of its agreement, 5,657,500 barrels of oil, but up to the beginning of 1928 it had actually treated only 9,632 barrels of oil, approximately one-sixth of one per cent of possible production, though it too was obligated to use the petitioner's patented apparatus for treating oil exclusively. Hardly less striking is the case of the Petroleum Development Company with facilities at March 1, 1913, capable of treating, to the termination of its agreement, 50,640,875 barrels, though, up to the beginning of the present year, it has actually treated only 3,601,622 barrels, approximately seven per cent of possible production. The Pacific Crude Oil Company, without production of a single barrel of oil during its agreement, could not have been treating, or have been in a position to treat oil with petitioner's patented apparatus at March 1, 1913; while the American Union Oil Company and the Petroleum Development Company, with facilities of a rated capacity of approximately 1,200 barrels and 11,000 barrels per day, respectively, have had an approximate actual average daily production of but three and 770 barrels, respectively; and there is not a bit of

evidence that the facilities of the last two mentioned companies were being used to any greater extent at March 1, 1913, or that there was any prospect, at that date, of any greater use in the future.

“Another method suggested by petitioner is based upon the quantity of oil being handled by the General Petroleum Company at March 1, 1913, as the result of production from its own wells and oil acquired under purchase contracts, and the net oil reserves of the Chancellor-Canfield Midway Oil Company with which the Petroleum Development Company was merged though the time of the merger does not appear in the record. At March 1, 1913, the General Petroleum Company was producing about 8,500 barrels of oil per day from its own wells and was handling an additional 7,000 barrels per day under purchase contracts. At the same date, the net oil reserves of the Chancellor-Canfield Midway Oil Company amounted to 55,519,171 barrels. Based on these facts, the petitioner suggests that an estimate, at March 1, 1913, of the total amount of oil which the General Petroleum Company and the Petroleum Development Company would treat until the expiration of their agreements would have been 143,210,421 barrels. To this quantity the petitioner applies a royalty rate of 1-1/2 cents per barrel, and thereby determines that the expected future royalties from these companies amounted to \$2,148,156.31. This sum is then discounted to its present value, at March 1, 1913, by the application of Hoskold's formula, the petitioner finally arriving at a value of \$1,456,385.53. There are several objections to the suggested method. There was placed in evidence a resume of the twelve contracts under which the General Petroleum Company was purchasing oil at March 1, 1913. Of these twelve contracts, six expired during 1913, three expired

during 1914, one expired in 1916, the term of another is not shown, and one, the contract with the Ohio Valley Construction Company, does not expire until June 16, 1930. Whether there have been renewals of the contracts which have expired, or what the prospects for such renewals were at March 1, 1913, does not appear in the record. The contract with the Ohio Valley Construction Company calls for the purchase of 500,000 barrels of oil and all production thereafter to the termination of the contract. There is no evidence as to the probable amount of oil which the General Petroleum Company would acquire under this contract. The estimate of the total quantity of oil which would be treated by the General Petroleum Company and the Petroleum Development Company, includes 55,519,171 barrels for the Petroleum Development Company which represents the net oil reserves of the Chancellor-Canfield Midway Oil Company at March 1, 1913. There is no evidence whether the merger of the Petroleum Development Company with the Chancellor Canfield Midway Oil Company took place before or after March 1, 1913, or, if after, whether such a merger was contemplated at that date. Further, there is nothing to show that there was any probability, at March 1, 1913, that the entire oil reserves of the Chancellor-Canfield Midway Oil Company would be extracted and treated prior to the expiration of the license agreement.

“With the foregoing observations we reject the several methods of valuation suggested by the petitioner.

“There is much, however, in the evidence which convinces us that the license contracts had a considerable value at March 1, 1913. Both the president of the General Petroleum Company and the president of petitioner, who represented their respective companies in the negotia-

tions, testified that the General Petroleum Company, then known as the Esperanza Consolidated Oil Company, as an inducement to the petitioner to enter into the agreement of April 12, 1911, by which for a nominal cash consideration the Petroleum Company acquired a one-third interest in the petitioner, represented to the petitioner that it was entering upon the development of a large acreage of new oil land, that it was building a pipe line to deliver 30,000 barrels of oil per day at Los Angeles, that it proposed to use the patented apparatus of the petitioner exclusively for the treatment of this oil, and that license agreements for the use of such patented apparatus by its individual refining plants would be obtained as such plants were erected. The agreement itself supports the testimony of these two witnesses that the cash consideration stipulated therein was not the sole consideration, for it makes specific reference to representations made by the parties to each other; and the subsequent actions of the Petroleum Company, which are entirely in line with these representations, corroborates the testimony of these witnesses. There can be little doubt that out of these representations there arose obligations on the part of the General Petroleum Company and rights to the petitioner, which were just as binding and enforceable as though they had been specified in detail in the agreement, and not the least of these was the obligation of the Petroleum Company to use the apparatus covered by petitioner's patents exclusively in the treatment of crude oil.

“At March 1, 1913, the General Petroleum Company held in fee simple, by lease, and by contract 23,694.04 acres of oil lands in California, and 24,493.68 acres of such lands in the Republic of Mexico. All of these lands were being developed as rapidly as it was possible to do so. Already 160 producing wells had been brought in on the

California lands, six more were being brought in, and twenty-six additional wells were being drilled, but all of this represented the development of only nine hundred acres of its lands. From these producing wells alone, the company was realizing an average daily production of 8,500 barrels of crude oil. In addition to this daily production, the company had approximately 202,000 barrels of oil in storage, and was handling under purchase contracts approximately 7,000 barrels of oil per day. An investigation of its lands by the Income Tax Unit led to the determination that the company's oil reserves at July 11, 1916, in lands which it held at March 1, 1913, was 32,986,058 barrels, but in arriving at this figure there were deducted royalty oils of 3,789,004 barrels. Between March 1, 1913 and July 11, 1916, there were extracted from these same lands 13,314,841 barrels of oil. Thus, at March 1, 1913, the General Petroleum Company was in possession of oil reserves amounting to 49,999,903 barrels, which it was then bringing to the surface at the rate of 8,500 barrels per but it had already adopted the policy of rapid development of its other lands, a policy which was being carried into effect at the date stated. As a matter of fact, the average daily production between March 1, 1913 and July 1, 1916, amounted to approximately 14,000 barrels. The company already had in operation five plants, the patented facilities of which were capable of treating to the termination of the agreements, approximately 10,000,000 barrels of oil. The pipe line had been completed to Los Angeles, where, and at Mojave, refineries were under construction. Both of these

refineries were located in accordance with petitioner's recommendations, were designed by the petitioner, and were being constructed under petitioner's supervision. The combined facilities of these two refineries when completed were capable of treating, during the life of the license agreements, approximately 164,000,000 barrels of oil, and there were actually treated in those plants up to the beginning of 1928, when the agreements had approximately nine months to run, 157,852,587 barrels of oil which yielded to petitioner royalties of \$2,161,907.92.

"There is little of evidence as concerns existing conditions at March 1, 1913, in the case of the other licensees. As to them we know nothing more than the possible production of their facilities from March 1, 1913, to the termination of their agreements, the actual production up to the beginning of the present year, and the royalties paid to petitioner by those licensees.

"The facts given to us are not readily adaptable to the application of any mathematical formula as a means of checking the reasonableness of our own judgment. Recognizing all the facts in existence or in contemplation on March 1, 1913, we have sought to determine what a willing buyer and willing seller, without any compulsion to act in the matter but purely in their own mercenary interests, would fix upon as a fair price for these agreements at the date stated. We have disregarded none of the evidence, but have given all of it due consideration, and have reached the conclusion that these license agreements had a fair market value at March 1, 1913 of \$850,000.00. Since the average life of these agreements, at March 1,

(Testimony of A. J. Gutzler)

1913, was eleven years, eight months, twenty days, the petitioner is entitled to a deduction for exhaustion for each of the years in controversy, in the amount of \$72,511.90.

Judgment will be entered

Under Rule 50."

It was then stipulated by counsel in open Court that:

"The final orders of the Board of Tax Appeals based upon its decision were entered on April 30, 1929."

A. J. GUTZLER,

called as a witness on behalf of the plaintiffs, after being first duly sworn, testifies as follows:

DIRECT EXAMINATION

by Mr. Mackay:

I am one of the Trustees of the Trumble Refining Company, a dissolved corporation, which was the corporation that took appeal to the United States Board of Tax Appeals, in which it claimed the right to deduction for depreciation of license agreements. The Board held it was entitled to a deduction of \$72,511.90 per year. The Trumble Refining Company had the same license agreements in 1917 that it had in 1918.

CROSS EXAMINATION

by Mr. Harpole:

I remember writing and signing a letter to Mr. David Burnet, Deputy Commissioner of Internal Revenue, on August 5, 1930.

The witness A. J. Gutzler was then excused.

(Testimony of Frank M. McDonnell)

FRANK M. McDONNELL,

called as a witness on behalf of the plaintiffs, after being first duly sworn, testifies as follows:

DIRECT EXAMINATION

by Mr. Mackay:

I am a certified public accountant, certified in 1922. I was associated with Haskins & Sells in 1920 and had charge of the Trumble Refining Company income tax case at that time. I prepared the claim for abatement filed on June 17, 1920 and the claim for refund of \$11,870.88. Exhibits "D" and "F", respectively, of Plaintiffs' "Exhibit 1".

I prepared a claim for refund signed by Mr. Gutzler, or by the Trumble Refining Company by Mr. Gutzler, on June 17, 1920. That claim was on printed Form 47-A. That was crossed out and "46" written underneath and the claim was printed "Claim for Credit", but above the "credit" is marked in ink "A Refund". In the body of that claim were the words, "We hereby claim refund of tax paid for the reason set forth in the letter attached hereto". This claim for refund and the claim for abatement were filed at the same time and were pinned together. They had attached to them a copy of a letter dated June 16, 1920. Exhibit "F" of Plaintiffs' "Exhibit

(Testimony of Frank M. McDonnell)

1" contains the same writing in the body of it. It says: "We hereby claim refund of tax paid for the reason set forth in letter attached hereto". That is my writing. The claim for refund last referred to is dated July 2, 1920. The subsequent claim for refund was filed because it was on the wrong form, according to my recollection. The letter of June 16, 1920, included in Exhibit "D" of Plaintiffs' "Exhibit 1", is a copy of letter which was attached to the refund claim filed on July 2, 1920.

The witness Frank M. McDonnell was then excused.

Petitioners' counsel then announced that the petitioners rested.

Thereupon the following documents were introduced in evidence by the defendant:

Defendant's Exhibit A. (Exhibit "A" consists of a letter admitted to have been written by the Trumble Refining Company by A. J. Gutzler to David Burnett, Deputy Commissioner of Internal Revenue on August 5, 1930, to which the following objection was interposed by plaintiffs through their counsel:

Mr. Mackay: I object to it as irrelevant and immaterial.

(Objection was over-ruled and exception allowed by the Court.)

DEFENDANT'S EXHIBIT A

"TRUMBLE REFINING COMPANY
756 Subway Terminal Bldg.
Los Angeles, Calif.

(Not nec. to ack.
(Left in person,
IT:E:RRR

August 5, 1930

"Mr. David Burnett,
Deputy Commissioner of Internal Revenue,
Washington, D. C.

Dear Sir:

"Replying to your letter of May 22, 1930, File IT:AR:G-4 TCC, with reference to claims for refund filed by the Trumble Refining Company for the years 1913 to 1918 inclusive and for the years 1920 to 1924 inclusive, wish to advise as follows:

"Regarding the calendar year 1917, for which under date of April 24, 1929, we filed claim for refund for \$17,764.08 having adjusted the deduction for depreciation of license agreements in line with decision rendered by the United States Board of Tax Appeals in Dockets Nos. 11763, 117492, 26434 and 32151, wherein we were allowed a March 1, 1913 value of \$850.00 on certain license agreements for depreciation purposes resulting in an annual deduction of \$72,511.90, based upon an average life of eleven years, eight months and twenty days as of March 1, 1913. We wish to inform you regarding the year 1917 that under date of June 17, 1920 we filed a

claim for refund for \$9,749.80. The original return filed for the year 1917 showed a tax liability of \$11,870.68, which was paid on the quarterly payment dates in 1918. The original return included no allowance or deduction for depreciation of royalty contracts, so that on June 17, 1920 this company filed a claim on Form 46, attaching an amended return which included a deduction of \$54,-121.42 for depreciation of royalty contracts resulting in a tax liability for the year of \$2,120.66 and claiming a refund of the difference, or \$9,749.80. This claim Commissioners No. 78180 was rejected by the Commissioner under date of December 13, 1921.

“Under date of February 21, 1920 the Commissioner proposed an additional tax for the year 1921 of \$6,365.00 and assessment was made of this tax plus interest of \$1,082.05, or \$7,447.05 on January 13, 1922. Claim for abatement of additional taxes was rejected and tax of \$6,365.00 plus interest of \$1,646.36 less overassessment #308,813 for \$151.17, or \$7,860.19 was paid on May 22, 1923.

“We contend that the refund claim filed by this company under date of June 17, 1920 was within the statutory period and that this claim should be reopened in accordance with provisions of Treasury Decision No. 4235 providing for the reopening of claims previously rejected under certain conditions, one provision of which reads as follows:

“‘A refund or credit is properly allowable under a Court decision or a decision of the Board of Tax Appeals

to which the appellant was a party and the adjustment in accordance therewith requires a compensating adjustment (such as an adjustment in inventory or invested capital or the shifting of an item of income or loss from one taxable period to another) for one or more other taxable periods, and the applicant requests the re-opening of the case for such other taxable periods.'

"We attached herewith statement showing the amount of tax due for the year 1917 after giving affect to proper depreciation deduction in accordance with the decision of the Board in the heretofore mentioned cases; also taking credit for tax and interest paid covering this year, which results in a refund to this company of \$17,764.08 plus interest thereon as provided by law.

"We, therefore, respectfully request a re-opening of this claim and refund made in accordance with revised tax liability for this year.

Yours truly,

TRUMBLE REFINING COMPANY

By A. J. GUTZLER,

Secretary"

Defendant's Exhibit B. (Defendant's Exhibit "B" consists of a reply to Exhibit "A" and bears date of November 3, 1930.) The introduction of this in evidence was objected to by the plaintiffs on the ground that it was irrelevant and immaterial. The objection was overruled and exception allowed by the Court.

DEFENDANT'S EXHIBIT B

"November 3, 1930

IT:E:RRR

"Trumble Refining Company,
756 Subway Terminal Building,
Los Angeles, California.

Sirs:

"Reference is made to your letter dated August 5, 1930, in which you request the reopening of a 1917 claim for refund of income and excess profits taxes which was rejected in Bureau letter dated December 13, 1921.

"The request for reopening is based on a decision of the United States Board of Tax Appeals covering subsequent years, in which you were allowed an annual deduction for depreciation of certain license agreements.

"From the record it is observed that the Commissioner has not acquiesced in the above-mentioned decision. It is also noted that more than five years have elapsed from the date the taxes were paid, and since the claim for refund was rejected on December 13, 1921, reopening of the claim is specifically precluded by Treasury Decision 4235 which prohibits the reopening of any claim for refund which was disallowed prior to May 29, 1928, and on which the period for bringing suit in court has expired unless a request for reopening was filed on or before January 31, 1929.

Respectfully,

Deputy Commissioner.

ALS"

Counsel for the plaintiffs then offered and were by the Court granted leave to file the following amendment to the First Amended Petition with the expressed understanding that the allegations in said amendment were by agreement of counsel and order of the Court deemed denied by the defendant:

“(Title of Court and Cause)

“MOTION TO AMEND FIRST AMENDED
PETITION

“Come now the plaintiffs in the above entitled action and move this Honorable Court for permission to amend Paragraph V of the First Amended Petition filed hereby by adding to said paragraph the following:

“That the Trumble Refining Company never made application for an assessment under Section 210 and never acquiesced in the Commissioner’s determination that the assessment should be made under this provision; that the action of the Commissioner of Internal Revenue and defendant in determining the tax liability of Trumble Refining Company for the year 1917 under the provisions of Section 210 of the Revenue Act of 1917 was erroneous and illegal.

(signed) THOMAS R. DEMPSEY
Thomas R. Dempsey

(signed) A. CALDER MACKAY
A. Calder Mackay

Attorneys for Plaintiffs”

Plaintiff’s counsel then announced that plaintiffs rested and moved for judgment on the record.

Defendant then filed the following written motion for judgment:

“(Title of Court and Cause)

“MOTION FOR JUDGMENT

“Comes now the defendant, by and through its attorneys, Peirson M. Hall, United States Attorney for the Southern District of California, E. H. Mitchell, Special Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney for the Treasury Department, and moves the Court for judgment in behalf of the defendant on the ground and for the reason that there is no substantial or sufficient evidence before the Court upon which to base a judgment for the plaintiff.

“Dated this 2nd day of February, 1937.

 PEIRSON M. HALL,
 U. S. Attorney

 E. H. MITCHELL,
 Special Assistant U. S. Attorney.

 EUGENE HARPOLE,
 Special Attorney for the Treasury
 Department.”

Both the motions of plaintiffs and of defendant for judgment were denied by the Court and exceptions allowed.

A. Calder Mackay, appearing as attorney for the plaintiffs, then proceeded with oral argument on behalf of the plaintiffs' case. Eugene Harpole, appearing as attorney for the defendant, then responded to the arguments advanced in behalf of the plaintiffs and questions propounded by the Court.

At 5:05 o'clock P. M. on February 2, 1937 an adjournment of Court was taken until 10:00 o'clock A. M. Wednesday, February 3, 1937.

Upon the reconvening of Court on February 3, 1937 argument on behalf of the defendant was resumed by Eugene Harpole. He was followed by A. Calder Mackay, who advanced further argument in favor of the plaintiffs' case.

The Court then, with the consent of counsel, reopened the case for the introduction of further documentary evidence.

Thereupon the following exhibits were introduced in evidence by the plaintiffs and defendant, respectively:

Plaintiffs' Exhibit No. 6. (Exhibit No. 6 consists of the deficiency notice issued to Trumble Refining Company covering the year 1918.)

PLAINTIFFS' EXHIBIT 6

“Treasury Department
Washington

Office of
Commissioner of Internal Revenue

Address reply to
Commissioner of Internal Revenue
and refer to
IT:E:SM
RLC-A-6566

November 6, 1924

“Trumble Refining Company of Arizona,
312 Union League Building,
Los Angeles, California.

Sirs:

“An audit of your income and profits tax return for the taxable year 1918 has resulted in the determination of a deficiency in tax of \$27,775.11 as shown in the attached statement.

“In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed sixty days from the date of this letter within which to file an appeal to the

Board of Tax Appeals contesting in whole or in part the correctness of this determination.

“Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the sixty days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

“If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:E:SM-RCL-A6566. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

D. H. BLAIR,

Commissioner,

by J. G. BRIGHT,

Deputy Commissioner.

Enclosures :

Statements

Agreement - Form A

“STATEMENT

“IT:E:SM

RLC-A-6566

In re: Trumble Refining Company of Arizona,
312 Union League Building,
Los Angeles, California.

	<u>Deficiency</u>
“1918 (Waiver filed)	\$27,775.11

“You are advised that the Committee on Appeals and Review in Recommendation Number 8766 dated July 14, 1924 has sustained the action of the Income Tax Unit in allowing your application for assessment under the provisions of Section 328 of the Revenue Act of 1918.

“The recommendation as approved states in substance that the Committee has reached the conclusion that the value as of March 1, 1913 of the interest in the patents undisposed of by appellant in 1915 was not more than \$160,000.00 and the recommendation accordingly is made that the appellant be permitted to amortize the value of his interest in the patents over their remaining average life from March 1, 1913, namely fifteen years.

“The Committee finds in connection with the second question presented that the comparatives selected by the unit meet all the requirements specified in Section 328 of the Act and that the resulting rate of profits tax to net

income is equitably alike to the Government and to the taxpayer.

“In accordance with the above, your net income has been adjusted and the tax computed as follows:

Net income previously determined		\$71,415.79	
Less: Amortization of patents allowed by the Committee on Appeals and Review, Recommendation #8766 (1/15 of \$160,000.00)			10,666.67
			<hr/>
Corrected net income		\$60,749.12	
Profits tax under Section 328		\$24,936.07	
Net income		\$60,749.12	
Less: Profits tax	\$24,936.07		
Exemption	2,000.00	26,936.07	
		<hr/>	<hr/>
Balance taxable at 12%		\$33,813.05	4,057.57
			<hr/>
Total tax assessable		\$28,993.64	
Original tax assessed, account #50011			1,218.53
			<hr/>
Additional tax assessable			\$27,775.11”

Defendant’s Exhibit C. (Exhibit “C” consists of a memorandum of the Income Tax Unit dated January 14, 1924, and a letter of transmittal.)

DEFENDANT'S EXHIBIT C

"January 14, 1924

"IT:E:SM
RIB-A-6566

"Trumble Refining Company of Arizona,
c/o E. P. Adams,
312 Union League Building,
Los Angeles, California.

Sirs:

"The appeal of the Trumble Refining Company of Arizona, dated November 17, 1923, from the findings of the Income Tax Unit in respect to its returns for the year 1918, has been transmitted to the Committee on Appeals and Review.

"In accordance with Treasury Decision 3492, there is attached a copy of the transmittal letter.

Respectfully,

(signed) J. G. BRIGHT
Deputy Commissioner.

Enclosure:

Copy of Letter.
GDS-5

"IT:E:SM
RIB/A-6566

- "FROM: Special Assessment Section,
Income Tax Unit.
- "TO: Committee on Appeals and Review.
- "CASE OF: Trumble Refining Company of
Arizona, Los Angeles, California.
- "STATEMENT: Year under audit - 1918
Additional tax - \$33,107.97
Claims - None.
- "ISSUES: (1) Disallowance of depreciation on
royalty contracts.
(2) Computation of the profits tax
under Section 328 of the Revenue
Act of 1918.
- "FACTS: (1) Appellant was incorporated in
1910, to take over two patents,
known as Trumble Evaporator for
Petroleum and Trumble Oil Sepa-
rator, a purifier. Letters patent
were issued July 4 and September
5, 1911, respectively. Stock was
issued for these patents and some
stock was sold for cash. It is
attempted by the taxpayer to es-
tablish a March 1, 1913 value,
based upon anticipated earnings

from the contracts. All the patents were sold in April, 1915, for one million dollars, the company retaining some seventeen royalty contracts made at various dates, from January, 1911 to July, 1913, based upon these patents sold. The alleged value of these contracts was set up by deducting the one million received from the sale of patents from the alleged March 1, 1913 value of patents and patent right. It is this latter sum which taxpayer now claims is depreciable.

“TAXPAYER’S

CONTENTION: (1) Taxpayer’s contention is that royalty rights under patents disposed of in 1915, are depreciable. The contention is based upon the first paragraph in A. R. M. 35, which is the case of A, assigning American patents to a foreign corporation, and retaining forty per cent interest in the profits therefrom. The Committee held that A had a depreciable interest in the patents.

“UNIT’S

CONTENTION: (1) The Unit cannot concede the contention of the taxpayer, either as to the March 1, 1913 value of the patents or the contention that royalty rights, such as are present in the taxpayer’s case, are depreciable. The representative’s attention was called to A. R. M. 35, which states that the value of patents should be segregated and each depreciated on its own life. Segregation, it is said, cannot be done in the present case. The taxpayer’s case is not analagous to that cited in A. R. M. 35, as, in this case under consideration, taxpayer retains no interest in the earnings from assigned patents.

“FACTS:

(2) The entire gross income of this corporation is derived from royalties on the use of patented oil refining apparatus. The contracts require occasional inspection of the apparatus in use and supervising of the installation of new apparatus. The Revenue Agent reduced invested capital to \$380.70, the March 1, 1913, value of the patent rights not being determin-

able. The tax liability was computed under Section 328 and the taxpayer notified by registered letter of October 17, 1923.

“TAXPAYER’S

CONTENTION: (2) It is contended that insufficient relief has been given by the computation of the tax under Section 328.

“UNIT’S

CONTENTION: (2) The comparatives shown on the data sheet are quite similar in all important respects to the appellant and derive their income from similar sources. Since the comparatives appear suitable and the rate determined thereby not excessive for 1918, the Unit cannot concede the taxpayer’s contention.

“CONFERENCES: November 20 and 21, 1923.
Issues (1) and (2) considered.
A copy of this letter of transmittal is being forwarded to the taxpayer in accordance with Treasury Decision 3492.

Deputy Commissioner.

Defendant's Exhibit D. (Exhibit "D" consists of an appeal to the Commissioner of Internal Revenue by Trumble Refining Company in the form of letters dated November 3 and November 17, 1923, respectively.)

DEFENDANT'S EXHIBIT D

"TRUMBLE REFINING CO.

Higgins Building
Second & Main
Los Angeles, California.

November 3, 1923.

"Commissioner of Internal Revenue,
Washington, D. C.

Attention: IT:E:SM:RIB-A-6566-APP

Sir:

"Reference is made to your letter (file reference as above) dated October 17, 1923, in which letter we are advised of the proposed assessment of an additional income and profits tax of \$33,107.97 for the year 1918.

"Protest is hereby entered to the assessment of this tax and request made for a conference with the Income Tax Unit on November 20, 1923, on which date our representative, Mr. E. P. Adams, will be in Washington.

“This protest and request for a conference is not made for the purpose of delay, but solely for the reconsideration of the points at issue and an opportunity to present in detail the facts in connection with this taxpayer’s contentions on the following:

1. Disallowance in part of the Salaries paid to Officers.
2. Disallowance of depreciation of patents.
3. Computation of War and excess profits taxes.

“Please address any communication relative to the conference to E. P. Adams, Raleigh Hotel, Washington, D. C.

Respectfully,

TRUMBLE REFINING COMPANY OF ARIZONA

By A. J. GUTZLER,

Secretary.

:	RECEIVED	:
:	Nov. 8 PM.	:
:	Spec. Corres. Cont.	:
:	No. 102519	:

“Subscribed and sworn to before me this third day of November, 1923.

(SEAL)

PEARL TRALLE

Notary Public in and for the County of Los Angeles,
State of California.”

"E. P. ADAMS

Public Accountant

and

Tax Consultant

Suite 312, Union League Building
Los Angeles

Washington, D. C.
November 17, 1923.

: RECEIVED :
: Nov. 21, 1923 :
: Special Assessment Section :
:

"To the Commissioner of Internal Revenue,
Washington, D. C.

In re: IT:E:SM:RIB-A-6566-App.
Trumble Refining Company, of Arizona,
Higgins Buildings,
Los Angeles, California.

Sir:

"Reference is made to your letter (File Reference as above) dated October 17, 1923, and reply thereto, dated November 3, 1923.

"In the letter dated November 3, 1923, the taxpayer entered a protest to the assessment of an additional in-

come and profits tax for the year 1918 of \$33,107.97 and enumerated the findings of the Income Tax Unit to which exceptions were taken. Request was made in such letter for a conference on November 20, 1923, with Income Tax Unit, at which time oral presentation could be made of the taxpayer's contentions.

"As a matter of record and in accordance with the provisions of T. D. 3492, appeal is hereby entered to the Commissioner of Internal Revenue for a review of the decisions of the agencies of the Bureau of Internal Revenue and the taxpayer's contentions relative thereto. Such appeal is to be transmitted by the Income Tax Unit to such agency as may be designated by the Commissioner of Internal Revenue, in the event the taxpayer and the Income Tax Unit fail to reach an agreement on the points at issue.

Respectfully,

TRUMBLE REFINING COMPANY OF ARIZONA

By E. P. ADAMS

Attorney in Fact.

"Subscribed and sworn to before me this 17th day of November, A. D. 1923.

ELIZABETH C. MONAHAN

Notary Public, D. C."

The foregoing constitutes all of the evidence introduced by the plaintiffs and the defendant. It was then ordered by the Court that the case stand submitted for decision.

Thereafter, and on the first day of March, 1937, the Court entered the following Minute Order:

“(Date and Title of Court and Cause)

“This cause having heretofore been heard by the Court on evidence both oral and documentary, and counsel having argued the cause and submitted written briefs and the Court having duly considered the same and being fully advised as to the facts and the law, now hands down its written opinion and finds in favor of the plaintiffs. Counsel for plaintiffs to prepare findings and judgment incorporating therein an exception to the defendant.”

and filed the following memorandum of its Conclusions:

“(Title of Court and Cause)

“MEMORANDUM OF CONCLUSIONS
(Judge Hollzer, March 1, 1937)

“It appearing that the Trumble Refining Company, a dissolved corporation of which the plaintiffs are trustees, on or about March 15, 1918 filed its income and profits tax return for the year 1917, that thereafter, and on or about June 17, 1920, said Trumble Refining Company filed an amended income tax return for the year 1917, that thereafter and on or about July 21, 1920 said Company filed its claim for refund demanding the return to it, on account of over-payment of taxes by it for the year 1917, of the sum of \$9,749.80, that at the same time, and as part of the same demand, said Company filed a claim for abatement in the sum of \$6,365.00 theretofore determined by the Commis-

sioner of Internal Revenue as the amount of additional taxes owing by said Company for the year 1917; and

“It further appearing that in the year 1921, the Commissioner of Internal Revenue caused an investigation to be made in the matter of said amended return, also said claim for refund and said claim for abatement, that thereafter and under date of December 13, 1921 the Commissioner advised said Company that its claim for refund and its claim for abatement would be rejected, that thereafter and on or about February 1, 1922 said Company filed with the Commissioner a comprehensive brief, of which plaintiffs’ Exhibit ‘3’ is a copy, that said brief was prepared by said Company’s tax consultant and dealt with the subject matter of assessment of Federal taxes against it for the years 1917-1920, inclusive, that in and by said brief said Company protested against proposed additional taxes for each of said last mentioned years, that the principal contention discussed in said brief, and the one which said company asserted was applicable to, and affected alike each of the years 1917-1920 inclusive, was its contention that it was entitled to an annual deduction of \$54,121.42 from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements, that pages 49 and 50 of said brief, being a portion of Exhibit ‘H’ attached to said brief, contained a computation of Federal taxes for the year 1917 and, among other items, purported to show and to claim that the normal Federal tax due from said Company for the year 1917 amounted to the sum of \$2,091.59 also that it had paid a Federal tax for that year amounting to the sum of \$11,870.68 and that there was a refund due to said Company for that year amounting to the sum of \$9,679.09; and,

“It further appearing that on December 9, 1922, said Company’s tax consultant conferred with one of the officials of the Bureau of Internal Revenue, said official being then in charge of its special audit section, that at said conference said Company’s tax consultant requested a hearing on the subject of said Company’s taxes for the years 1917 to 1920 inclusive, that said official responded that said Bureau was not yet ready to take up the matter of the Company’s taxes for all of those years but would hold in abeyance the consideration of the taxes for 1917 until said Company’s taxes for the remaining years could also be reviewed, that at the request of said official said Company thereafter, and on or about February 1, 1923, filed with the Commissioner an Income and Profits Tax Waiver, being an unlimited waiver of the Statute of Limitations governing the time within which the Commissioner could make additional assessments to taxes against said Company for the year 1917; and

“It further appearing that thereafter and on February 5, 1923 the Commissioner notified said Company that its taxes had been redetermined for the year 1917 with the result that there appeared to be an over-assessment in the amount of \$151.17, that thereafter and under date of February 23, 1923, and in response to said notice, said Company wrote to the Commissioner calling attention to its said brief, aforementioned, and also calling attention to the aforementioned conference had by its tax consultant with an official of the Bureau on December 9, 1922, at which conference request had been made for a joint consideration of all the years involved at a hearing to be held in Washington, and in said response said Company also requested that under these conditions further action be with-

held in the matter of entering an over-assessment for 1917; and

“It further appearing that on or about May 15, 1923 said company telegraphed the Commissioner that, in view of the understanding reached at said conference held December 9, 1922, and because questions involved in 1917 affected all years, he should instruct the local Collector of Internal Revenue to withhold collection of additional taxes assessed for 1917, and that the Commissioner should fix a date for a conference at which all years might be considered, that thereafter and in response to said Company’s telegram, the Commissioner, on or about May 21, 1923, telegraphed said Company as follows:

“ ‘Reply telegram fifteenth No authority to instruct Collector Accept abatement claim to replace claim rejected Conference may be arranged on nineteen seventeen case if formal protest is filed but is impracticable on later years until information submitted is considered and audit completed.’

and

“It further appearing that thereafter, in the early part of May, 1924, said Company’s tax consultant, acting on its behalf, held a conference with an official of the Commissioner’s office, that at said conference said Company’s representative delivered to said official a brief of which plaintiffs’ exhibit ‘4’ is a copy, wherein said Company protested against the decisions of the Income Tax Unit on which assessment of additional taxes had been made for 1917 and was proposed for 1918 and subsequent years, that in said brief additional arguments were presented in support of said Company’s contention that it was entitled to the

previously claimed annual deduction from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements, that at said last mentioned conference said Company's representative discussed with said official said Company's contentions respecting taxes as to all of said years, that during said conference said official had before him a file containing documents pertaining to said Company's taxes for all of said years, that among such documents then in the hands of said official were said briefs filed on behalf of said Company in February, 1922 and May, 1924, respectively, and also the Revenue Agent's report upon which additional assessments had been proposed to be made against said Company; and

"It further appearing that on or about May, 1923, said Company paid under protest to the local Collector of Internal Revenue the sum of \$6,365.00 plus accrued interest, on account of additional taxes assessed against it for the year 1917; and

"It further appearing that in the year 1924 the Committee on Appeals and Review of the Commissioner's office considered the subject matter of the assessment of additional taxes against said Company and thereafter recommended to the Commissioner that the March 1, 1913 value of said patent license agreements be fixed at the sum of \$160,000.00 and that amortization be allowed to said company on the basis of such valuation, that thereupon said recommendation was adopted by the Commissioner; and,

"It further appearing that thereafter appeals were taken by said Company to the United States Board of Tax Appeals with respect to said Company's taxes for the years 1918 and 1920 to 1923 inclusive, that thereafter and on or

about November 19, 1928 said Board rendered its decision, holding in effect that said Company, on March 1, 1913, was the owner of patent license agreements having a value of \$850,000.00 and further holding that said company was entitled to deduct from income annually the sum of \$72,511.90 on account of depreciation and exhaustion of the value of said agreements, that no appeal was taken from said decision of said Board; and

“It further appearing that on about April 25, 1929 said Company filed with the Commissioner its revised claim for refund in the sum of \$17,764.08, on account of taxes, plus interest thereon, paid for the year 1917, said claim being computed in conformity with the aforementioned decision of the Board of Tax Appeals, that thereafter and under date of May 22, 1930, the Commissioner notified said Company in substance to the effect that for the years 1920, 1922 and 1923 the deduction for depreciation of license agreements in the amount of \$72,711.80 had been allowed in the adjudication of its tax liability for each of those years in accordance with said decision of said Board, also that said Company’s claims for refund for the years 1913, 1914, 1915, 1916 and 1919 were barred by the statute of limitations, that since no tax was paid for any of said last mentioned years within four years of the filing of the claim the statute of limitations had run and no refund could be made for those years, and that since the Commissioner had not acquiesced in said decision of said Board with respect to the March 1, 1913 valuation of said license agreements for depreciation purposes, said Company’s contention could not be allowed for those years which were not pending before said Board, namely, 1913 to 1917 inclusive, and 1919; and

“It further appearing that in his letter to said Company, under date of November 3, 1930, said Commissioner for the first time stated or took the position in his negotiations with said Company to the effect that re-opening of its claim for refund on account of 1917 taxes was prohibited and that the period for bringing suit thereon had expired; and

“It further appearing that at all times from and after June 17, 1920 said Company in its negotiations and dealings with the Commissioner took the position that it was entitled annually to deduct a similar amount from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements, such annual deduction being claimed to be in excess of the sum of \$54,000.00; and

“It further appearing that said Company at no time requested or acquiesced in a redetermination of its income and excess profits taxes for 1917 in accordance with the provisions of Section 210 of the Revenue Act of October 3, 1917;

“THE COURT CONCLUDES that subsequent to the original rejection of said Company's first claim for refund and first claim for abatement, that is to say, that subsequent to December 13, 1921 and prior to February, 1923, and that likewise subsequent to February, 1923, the Com-

missioner re-opened and continued to give further consideration to said Company's claims and contentions respecting taxes paid and also respecting additional taxes proposed to be assessed for the year 1917, that said Company's claims and contentions respecting such taxes were still pending before and under consideration by the Commissioner on the date, to-wit, on or about April 25, 1929, when said Company filed its revised claim for refund, and that said Company's claims and contentions respecting such taxes were finally passed upon and determined by the Commissioner when he rejected said revised claim.

"THE COURT FURTHER CONCLUDES that the claim herein sued upon was filed within the time allowed by law.

"THE COURT FURTHER CONCLUDES that it has jurisdiction to hear and determine this proceeding.

"THE COURT FURTHER CONCLUDES that plaintiffs are entitled to recover on the basis of allowing a deduction from its 1917 income of the sum determined by the Board of Tax Appeals to be a proper deduction on account of annual depreciation and exhaustion of the value of its license agreements.

"Counsel for plaintiffs are requested to prepare and serve findings and judgment in conformity with this memorandum incorporating in the said judgment an exception in favor of defendant.

“(See: Staton vs US, 9 F Supp 428;
 Pierce-Arrow Motor Car Co. vs US, 9 F Supp
 577;
 American Safety Razor Corp. vs US, 6 F
 Supp 203;
 McKeever v. Eaton, 6 F Supp, 697;
 Obispo Oil Co. vs Welch, etc., 85 F (2d)
 860)”

On May 4, 1937 the defendant prepared, served and filed the following written Motion for Arrest of Judgment and Memorandum of Authorities in support thereof:

“(Title of Court and Cause)

“MOTION FOR ARREST OF JUDGMENT AND
 FOR DISMISSAL OF THE ACTION.

“Now on this 4th day of May, 1937, comes the United States of America, by its attorneys, Peirson M. Hall, United States Attorney for the Southern District of California, E. H. Mitchell and Alva C. Baird, Assistant United States Attorneys for said District, and Eugene Harpole, Special Attorney for the Treasury Department, and moves that Judgment in the above-entitled cause be arrested as to it and the action dismissed upon the following grounds, and for the following reasons:

I.

“By reason of the pleadings and upon the record upon which the case is submitted the plaintiff is not, as a matter of law, entitled to recover the whole, nor any part of the sum sued for herein.

II.

“That this Court has no jurisdiction of the subject matter of this action, the tax sought to be recovered having been assessed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917.

“Dated this 4th day of May, 1937.

PEIRSON M. HALL,
United States Attorney

E. H. MITCHELL,
Asst. U. S. Attorney

ALVA C. BAIRD
Asst. U. S. Attorney

EUGENE HARPOLE,
Special Attorney for the Treasury
Department.”

“(Title of Court and Cause)

“MEMORANDUM OF POINTS AND
AUTHORITIES

I.

“The taxes involved in this action were assessed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917.

II.

“The grant of Special Assessment and the ascertainment of the rate of tax to be applied to the net income of the taxpayer are indissolubly connected by the terms of the statute. The exercise of the discretion of both aspects is committed to the Commissioner and to the Board of Tax Appeals upon review of his action. That discretion can not be reviewed by the Courts nor exercised by them in place of the administrative officer designated by law. It is beyond the power of a Court to exercise the Commissioner’s function of finding that Special Assessment should be accorded, and equally so to substitute its discretion for his as to the factors to be used in computing the tax. The taxpayer’s net income is an essential factor in the problem. Heiner v. Diamond Alkali Company, 53 S. Ct. 513, reversing the Circuit Court of Appeals for the Third Circuit, 60 Fed. (2d) 505, which affirmed the District Court, 39 Fed. (2d) 645; Williamsport Wire Rope Company v. United States, 48 Sup. Ct. 587, 6 A. F. T. R. 7797, affirming United States Court of Claims 63 Ct. Cls. 463; Galen

H. Welch v. Obispo Oil Company, Supreme Court of the United States No. 602, decided April 26, 1937, not yet officially reported (Par. 1338, Prentice-Hall Tax Service, report of April 29, 1937), reversing the Circuit Court of Appeals for the Ninth Circuit, 85 Fed. (2d) 860, which affirmed the District Court for the Southern District of California in Obispo Oil Company v. Welch, No. 3334-J, 15 A. F. T. R. 1002. See also Clinton Corn Syrup v. United States, 67 Ct. Cls. 711 (Cer. Den., 50 Sup. Ct. 33); and Feilbach Company v. Niles, 21 Fed. (2d) 495. (See Paragraph XII, Stipulation of Facts.)

PEIRSON M. HALL,
United States Attorney

E. H. MITCHELL,
Asst. U. S. Attorney

ALVA C. BAIRD,
Asst. U. S. Attorney

EUGENE HARPOLE,
Special Attorney for the Treasury
Department."

Thereafter, and on the 1st day of June, 1937 the plaintiffs prepared and presented to the Court Special Findings of Fact and Conclusions of Law together with a request for the adoption of the same in the words and figures as follows:

“(Title of Court and Cause)

“REQUEST BY PLAINTIFFS FOR FINDINGS OF
FACT AND CONCLUSIONS OF LAW.

“Come now the plaintiffs above named and hereby request the Court, that in rendering and making its judgment in the above entitled cause, which has been submitted to the Court, said Court make specific Findings of Fact and Conclusions of Law upon the issue included in said cause, as set forth in the proposed Findings of Fact and Conclusions of Law hereto attached.

“Dated: June 1, 1937.

THOMAS R. DEMPSEY

Thomas R. Dempsey

A. CALDER MACKAY

A. Calder Mackay

Attorneys for Plaintiffs.

“Not approved as to form as provided by Rule 44 because of decision of Supreme Court in Obispo Oil Company case.

PEIRSON M. HALL

United States Attorney

E. H. MITCHELL

Assistant United States Attorney

EUGENE HARPOLE

Special Attorney, Bureau of Internal Revenue,

Attorneys for Defendant.

"FINDINGS OF FACT

I.

"That the defendant, the United States of America, was, during all times material to this action, and still is, a sovereign body politic.

II.

"That the Trumble Refining Company was incorporated under the laws of the State of Arizona on or about July 13, 1910, and existed as a corporation until on or about March 24, 1930. That the said Trumble Refining Company was duly and regularly qualified to do business in the State of California and its principal place of business was located at Los Angeles, California. That on or about March 24, 1930 said Trumble Refining Company was duly and regularly dissolved and plaintiffs are now duly appointed, qualified and acting trustees in dissolution of said corporation and are empowered and entitled to institute and maintain causes of action for and on behalf of said Trumble Refining Company.

III.

"That the Trumble Refining Company within the time allowed by law and prior to April 20, 1918, filed with the then Collector of Internal Revenue, John P. Carter, its income and excess profits tax return for the year 1917 wherein it disclosed a gross income of \$97,503.11, deductions of \$8,033.57 and a net taxable income of \$89,469.54, which resulted in a tax liability, computed under Section 209 of the Revenue Act of 1917, of \$11,870.68, which on June 14, 1918 was paid to the said Collector of Internal Revenue. In determining its net taxable income as shown

on said return Trumble Refining Company inadvertently failed and neglected to take as a deduction from its gross income the exhaustion sustained upon its patent license agreements.

IV.

“That the said Trumble Refining Company from the time of its inception to and including the year 1917 was the owner and in possession of certain patent license agreements which on March 1, 1913 had a fair market value of \$850,000.00 and a remaining useful life from March 1, 1913 of eleven years, eight months and twenty days, and was therefore entitled, in the determination of its net taxable income, to an annual deduction of \$72,511.90, for the exhaustion of said patent license agreements. That the Trumble Refining Company’s net taxable income for the year 1917 was the sum of \$16,957.64.

V.

“That the invested capital of the Trumble Refining Company for the year 1917, as computed under the provisions of Section 207 of the Revenue Act of 1917, is the sum of \$67,760.17.

VI.

“That by letter dated February 21, 1920 the Commissioner of Internal Revenue proposed additional taxes against the Trumble Refining Company in the sum of \$6,365.00 which was assessed on May 17, 1920; in said letter of February 21, 1920 the Commissioner advised the Trumble Refining Company that in his opinion its business was of such a character as normally to require a substantial capital investment and the income was attributable to the employment of capital, and that therefore the tax lia-

bility of Trumble Refining Company could not properly be determined under the provisions of Section 209 of the Revenue Act of 1917; in said letter the Commissioner furthermore advised the Trumble Refining Company that in his opinion a large part of the Trumble Refining Company's invested capital could not be included under the statutory requirements for tax purposes and that therefore he had computed the tax under the provisions of Section 210 of the Revenue Act of 1917. That the additional taxes of \$6,365.00 so computed by the Commissioner were based upon a net income of \$89,469.54 – the net income reported by the Trumble Refining Company in its original return, which was erroneously computed without allowance for the exhaustion of its patent rights.

VII.

“That thereafter and on or about June 17, 1920 the Trumble Refining Company filed an amended income tax return for the year 1917 wherein it claimed a deduction for the exhaustion of its patent license agreements in the sum of \$54,121.42 based upon a March 1, 1913 value of \$811,821.36 and wherein it disclosed a tax liability of only \$2,120.88. That as a part of said amended return the Trumble Refining Company on or about July 2, 1920 filed its claim for refund demanding the return to it on account of overpayment of taxes by it for the year 1917 of the sum of \$9,749.80, and at the same time and as a part of said demand said company filed a claim to abate the assessment of \$6,365.00 theretofore determined by the Commissioner of Internal Revenue as the amount of additional taxes owed by said company for the year 1917.

VIII.

“That during August, 1921, the Commissioner of Internal Revenue through his Internal Revenue Agent at Los Angeles caused an investigation to be made in the matter of said amended return, said claim for refund and said claim for abatement, and as a result of such investigation additional taxes for the years 1917, 1918, 1919 and 1920 were proposed; that thereafter and under date of December 13, 1921 the Commissioner of Internal Revenue advised the Trumble Refining Company that its claim for refund and its claim for abatement would be rejected.

IX.

“That on or about January 13, 1922 a demand for the payment of said additional income and excess profits taxes of \$6,365.00 covered by the aforementioned claim for abatement and the Commissioner’s letter dated February 21, 1920, together with accrued interest of \$1,082.05 aggregating \$7,447.05, was made upon the Trumble Refining Company by the Collector of Internal Revenue for the Sixth Collection District of California. That on or about January 21, 1922 a second claim for abatement was filed with the Collector of Internal Revenue for the Sixth Collection District of the State of California in the sum of \$7,447.05.

X.

“That on or about February 1, 1922 the Trumble Refining Company filed with the Commissioner of Internal Revenue a comprehensive brief and formal protest against the proposed additional taxes as set forth in the Revenue Agent’s report dated August 17, 1921 for the years 1917 to 1920, inclusive, which brief and protest were prepared

by said company's tax consultant, dealing with the subject matter of assessment of Federal taxes against it for the years 1917 to 1920, inclusive; that in and by said brief said company protested against the proposed additional taxes for each of the last mentioned years; that the principal contention discussed in said brief, and the one which said company asserted was applicable to, and affected alike each of the years 1917 to 1920, inclusive, was its contention that it was entitled to an annual deduction of \$54,-121.42 from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements; that said brief contained, among other things, a computation of Federal income taxes for the year 1917, and also showed and claimed that the total tax due the United States Government from the Trumble Refining Company for the year 1917 amounted to the sum of \$2,091.59 and that it had paid a Federal tax for that year amounting to \$11,870.68, and that there was a refund due to said company for said year of \$9,679.09.

XI.

“That on December 9, 1922 the Trumble Refining Company's income tax consultant, Mr. E. P. Adams, conferred with one of the officials of the Bureau of Internal Revenue, said official being then in charge of the Special Audit Section; that at said conference said company's tax consultant requested a hearing on the subject of said company's taxes for the years 1917 to 1920, inclusive; that said official responded that said Bureau of Internal Revenue was not yet ready to take up the matter of the company's taxes for all of those years but would hold in abeyance the consideration and final determination of the tax liability for 1917 until said company's taxes for the remaining years could

also be reviewed and finally determined. That at the request of said official, confirmed in writing by the Commissioner of Internal Revenue in a letter dated January 9, 1923, the Trumble Refining Company on or about February 1, 1923 executed and filed with the Commissioner of Internal Revenue an income and excess profits tax waiver, being an unlimited waiver of the statute of limitations governing the time within which the Commissioner could make additional assessments of taxes against said company for the year 1917.

XII.

“That on February 5, 1923 the Commissioner of Internal Revenue notified the Trumble Refining Company that its taxes for the year 1917 had been redetermined under the provisions of Section 210 of the Revenue Act of October 3, 1917 with the result that there appeared to be an overassessment of \$151.17; that said proposed overassessment was based upon a net income of \$88,727.83, which was erroneously computed without allowance for the exhaustion sustained on patent rights; that thereafter and under date of February 23, 1923 and in response to said notice said Trumble Refining Company wrote to the Commissioner of Internal Revenue calling attention to its said brief aforementioned and also calling attention to the aforementioned conference had by its tax consultant with an official of the Bureau on December 9, 1922, at which conference request had been made for a joint consideration of all the years involved at a hearing to be held in Washington, and in said response said company also requested that under these conditions further action be withheld in the matter of entering an overassessment for 1917 and also requested the privilege of filing additional data to

prove Trumble Refining Company's right to a substantial deduction for the exhaustion of its patent rights.

XIII.

“That on or about May 15, 1923 the Trumble Refining Company telegraphed the Commissioner of Internal Revenue that in view of the understanding reached at said conference held December 9, 1922 and because the questions involved for the year 1917 affected all years, he should instruct the local Collector of Internal Revenue to withhold collection of additional taxes assessed for 1917 and that the Commissioner should fix a date for a conference at which all years might be considered; that thereafter and in response to said company's telegram, the Commissioner, on or about May 21, 1923, telegraphed said company that he had no authority to instruct the Collector to accept abatement claim to replace the claim rejected, but that a conference might be arranged on the 1917 case if a formal protest were filed and that it was impracticable on later years until information submitted was considered and audit completed. That acting in conformity with the telegraphic instructions the income tax consultant of Trumble Refining Company in the early part of May, 1924 held a conference with an official of the Commissioner of Internal Revenue's office and at said conference said company's representative delivered to said official a brief and protest containing additional data to support its right to an annual deduction from its gross income for the exhaustion of its patent license agreements based upon the March 1, 1913 value thereof; that in said brief the Trumble Refining Company protested against the decisions of the Commissioner on which assessment of additional taxes had been made for the year 1917, and was proposed for 1918 and

subsequent years; that in said brief additional arguments were presented in support of said company's contention that it was entitled to the previously claimed annual deduction from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements; that at said last mentioned conference said company's representative discussed with said official said company's contentions respecting taxes as to all of said years and that during said conference said official had before him a file containing documents pertaining to said company's taxes for all of said years; that among such documents then in the hands of said official were said income tax returns, claims for refund and briefs, which briefs were filed on behalf of said company in February, 1922 and May, 1924, respectively, and also the Revenue Agent's report upon which additional assessments had been proposed to be made against said company for the years 1917 to 1920, inclusive.

XIV.

"That on May 22, 1923 the Trumble Refining Company paid under protest to the then Collector of Internal Revenue Rex B. Goodcell the sum of \$7,860.19 covering said additional taxes of \$6,231.83 (\$6,365.00 minus \$151.17) and accrued interest thereon of \$1,636.36.

XV.

"That on July 14, 1924 the Committee on Appeals and Review of the Commissioner's office considered the subject matter of the assessment of additional taxes against said company and thereafter recommended to the Commissioner that the March 1, 1913 value of said patent license agreements of Trumble Refining Company be fixed at the sum of \$160,000.00 and that amortization be allowed to said

company on account of exhaustion of said patent license agreements on the basis of such valuation and that thereupon said recommendation was adopted by the Commissioner. That thereafter appeals were taken by the said Trumble Refining Company to the United States Board of Tax Appeals with respect to said company's taxes for the years 1918 and 1920 to 1923, inclusive, and thereafter and on or about November 19, 1928 the Board of Tax Appeals in the cases of Trumble Refining Company of Arizona, Docket No. 11763 involving the year 1918, Docket No. 17492 involving the years 1920 and 1921, Docket No. 26434 involving the year 1922 and Docket No. 32151 involving the year 1923, rendered its decision (reported in 14 B. T. A. page 348) holding that the Trumble Refining Company on March 1, 1913 was the owner and in possession of patent license agreements which on March 1, 1913 had a fair market value of \$850,000.00 and a remaining useful life from March 1, 1913 of eleven years, eight months and twenty days, and was therefore entitled in the determination of its net taxable income to an annual deduction of \$72,511.90 for the exhaustion and depreciation of the value of said patent license agreements; that on the 30th day of October, 1929, the United States Board of Tax Appeals entered its final order determining that the Trumble Refining Company was entitled to an annual deduction in the sum of \$72,511.90 for exhaustion of its license agreements. That neither the Trumble Refining Company nor the plaintiffs took an appeal from the Board's decision and said decision became final.

XVI

“That on or about April 23, 1925 the Trumble Refining Company filed with the Commissioner of Internal Revenue its revised claim for refund in the sum of \$17,764.08 on account of taxes, plus interest thereon, paid for the year 1917 as aforesaid, said claim being computed in conformity with the aforementioned decision of the Board of Tax Appeals. That the Commissioner of Internal Revenue in his letter dated May 22, 1930, sent to the Trumble Refining Company, referred to claims for refund of the Trumble Refining Company for the years 1913, 1914, 1915, 1916, 1917, 1919, 1920, 1922 and 1923. In said letter the Commissioner stated that all of the claims for said years were based upon the contention that the Trumble Refining Company was entitled to an annual deduction from income of \$72,511.90 for depreciation of license agreements in view of the decision rendered by the United States Board of Tax Appeals for the years 1918, 1920, 1921, 1922 and 1923, Docket Numbers 11763, 17492, 26434 and 32151, wherein the Trumble Refining Company was allowed a March 1, 1913 value of \$850,000.00 on certain license agreements for depreciation purposes resulting in an annual deduction of \$72,511.90 based upon an average life of eleven years, eight months and twenty days as at March 1, 1913. In said letter the Commissioner of Internal Revenue advised the Trumble Refining Company that its claims for refund for 1920, 1922 and 1923 had been allowed in accordance with the decision of the United States Board of Tax Appeals; also that said company’s

claims for refund for the years 1913, 1914, 1915, 1916 and 1919 were barred by the statute of limitations; that since no tax was paid for any of the last mentioned years within four years of the filing of the claim, the statute of limitations had run and no refund could be made; that since the Commissioner had not acquiesced in said decision of said Board of Tax Appeals with respect to the March 1, 1913 valuation of said license agreements for depreciation purposes, said company's contention could not be allowed for those years which were not pending before said Board, namely, 1913 to 1917, inclusive, and 1919. That the Commissioner's action in refusing to allow Trumble Refining Company a deduction of \$72,511.90 from its gross income for 1917 in accordance with the decision of the Board of Tax Appeals and in refusing to allow the refund due as a result of such allowance was arbitrary.

XVII

“That the Commissioner of Internal Revenue in his letter to the Trumble Refining Company under date of November 3, 1930 for the first time stated or took the position in his negotiations with said Trumble Refining Company to the effect that a re-opening of its claim for refund on account of 1917 taxes was prohibited and that the period for bringing suit thereon had expired, and at no time did the Commissioner advise the Trumble Refining Company that its refund for 1917 could not be allowed because its taxes were properly computed under the provisions of Section 210 of the Revenue Act of 1917.

XVIII

“That at all times from and after June 17, 1920 the Trumble Refining Company in its negotiations and dealings with the Commissioner took the position that it was entitled annually to a deduction from its gross income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements, such annual deduction being claimed to be in excess of the sum of \$54,000.00; that the Commissioner’s rejection on December 13, 1921 of said company’s original claim for refund was vacated and set aside, and said claim was re-opened and re-considered and was not rejected until May 22, 1930; that the Commissioner of Internal Revenue from the time the Trumble Refining Company filed its amended income tax return in June, 1920, disclosing that it had overpaid its taxes and was entitled to a refund for the taxes so overpaid, up to and until the date of the rejection of its revised claim considered the data and arguments submitted by the Trumble Refining Company and held in abeyance a final determination of the net taxable income of the Trumble Refining Company for the year 1917.

XIX

“That the Trumble Refining Company at no time requested or acquiesced in a determination of its excess profits taxes for the year 1917 in accordance with the provisions of Section 210 of the Revenue Act of October 3, 1917, and at all times material to this action protested the determination of its taxes under said section, and at all

times protested the Commissioner's determination that its net taxable income was \$89,469.54 or \$88,727.83 or any sum in excess of \$16,957.64; that the Commissioner was adequately apprised prior to the making of his special assessments of various grounds upon which error was claimed in his computation of net income and tax; that the Commissioner never took the position that his special assessments concluded the matter but on the contrary kept the case open and kept on re-examining the factors essential to determine the net taxable income of Trumble Refining Company for the year 1917; that the Commissioner's determinations to assess Trumble Refining Company under the provisions of Section 210 of the Revenue Act of October 3, 1917 made by him in his letters of February 21, 1920 and February 5, 1923 were vacated and set aside and at no time has the Commissioner of Internal Revenue made a final determination that the Trumble Refining Company's income tax liability should be computed under the provisions of Section 210 of the Revenue Act of October 3, 1917.

XX.

"That neither said John P. Carter, nor said Rex B. Goodcell were at the commencement of this suit in the employ of the Federal Government in the capacity of Collector of Internal Revenue for the Sixth Collection District, said John P. Carter having resigned on the 5th day of March, 1922 and Rex B. Goodcell having resigned on the 5th day of April, 1926.

XXI.

“That no action upon the claims hereinbefore referred to, other than as herein set forth, has been taken before Congress or before any of the departments of the Government of the United States, or in any court other than by the amended petition filed herein; that plaintiffs are now the sole owners thereof.

XXII.

“That the correct tax liability of the Trumble Refining Company for the year 1917 is the sum of \$3,389.19 and that the Trumble Refining Company overpaid its taxes for the year 1917 by the total sum of \$16,341.68; that there is now due and owing to these plaintiffs for taxes thus overpaid for the year 1917 the total sum of \$16,341.68, together with interest at the rate of 6% from the dates paid, \$6,231.83 having been paid on May 22, 1923 and the balance thereof, to wit, \$10,110.05 having been paid on June 14, 1918.

“CONCLUSIONS OF LAW

“The premises considered the Court concludes as a matter of law as follows:

I.

“That subsequent to the original rejection of said company's first claim for refund and first claim for abatement, that is to say, that subsequent to December 13, 1921 and prior to February, 1923, and likewise subsequent to February, 1923, the Commissioner reopened and kept reopened

and continued to give further consideration to said company's claims and contentions respecting taxes paid and also respecting additional taxes proposed to be assessed for the year 1917; that said company's claims and contentions respecting such taxes were still pending before and under consideration by the Commissioner on the date, to wit, April 25, 1929, when said company filed its revised claim for refund, and that said company's claims and contentions respecting such taxes were finally passed upon and determined by the Commissioner when he rejected said revised claim for refund.

II.

"That the Commissioner's letters of February 21, 1920 and February 5, 1923, advising the Trumble Refining Company that its taxes had been computed under Section 210 of the Revenue Act of 1917 were not regarded by the Commissioner as final determinations of its tax liability, the essential factor, to wit, the net income of the Trumble Refining Company not then having been finally determined, but on the contrary the Commissioner kept the case open and kept re-examining the situation; that the Commissioner's act on or about July 14, 1924 of determining that the Trumble Refining Company's patent license agreements had a March 1, 1913 value of \$160,000.00, vacated and set aside whatever determination he had made that the Trumble Refining Company's tax liability should be determined under the provisions of Section 210 of the Revenue Act of October 3, 1917.

III.

“That the claim herein sued upon was filed within the time allowed by law.

IV.

“That this Court has jurisdiction to hear and determine this proceeding.

V.

“That the plaintiffs are entitled to have refunded to them and to recover from the defendant:

“(a) The sum of \$10,110.05, together with interest thereon at the rate of six per cent (6%) per annum from June 14, 1918; and

“(b) The sum of \$6,231.83, together with interest thereon at the rate of six per cent (6%) per annum from May 22, 1923.

“Let judgment be entered accordingly and let proper exceptions by the defendant to the aforesaid conclusions be noted.

“Dated this day of June, 1937.

.....
Judge.”

On the first day of July, 1937 the defendant prepared and presented to the Court Special Findings of Fact and Conclusions of Law together with a request for the adoption of the same in the words and figures as follows :

“(Title of Court and Cause)

“REQUEST FOR FINDINGS OF FACT AND
CONCLUSIONS OF LAW

“Comes now the defendant above named, and requests the Court that in rendering and making its Judgment in the above-entitled cause, it makes specific Findings of Fact and Conclusions of Law upon the issues included in said cause as set forth in proposed Findings of Fact and Conclusions of Law hereto attached.

PEIRSON M. HALL,
United States Attorney

E. H. MITCHELL,
Asst. U. S. Attorney

EUGENE HARPOLE,
Special Attorney for the Treasury
Department.”

“(Title of Court and Cause)”

“FINDINGS OF FACT AND CONCLUSIONS OF
LAW

“The above-entitled action came on regularly for trial before the Court sitting without a jury, a jury having been waived in writing by the parties, on the 2nd day of February, 1937, A. Calder Mackay, Esq. appearing as attorney for the plaintiffs, Peirson M. Hall, United States Attorney for the Southern District of California, E. H. Mitchell, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney for the Treasury Department, appearing as attorneys for the defendant, and evidence both oral and documentary having been introduced by the respective parties, the cause submitted to the Court for decision, and the Court having fully considered the evidence, from said evidence makes the following:

“FINDINGS OF FACT

I.

“That the Trumble Refining Company was incorporated under the laws of the State of Arizona and existed as a corporation from July 13, 1910, until its dissolution on March 24, 1930. (Par. I, Stip.)

II.

“That the plaintiffs herein are the trustees in dissolution of said Trumble Refining Company. (Par. I, Stip.)

III.

“That the Trumble Refining Company filed its original Corporate Income and Excess Profits Tax Returns for the calendar year 1917 on March 29, 1918 and April 20, 1918, and thereafter and on June 14, 1918, paid income and excess profits taxes disclosed upon said returns in the sum of \$11,870.88. (Par. III, Stip.)

IV.

“That on February 21, 1920, the Commissioner of Internal Revenue, by letter, notified the Trumble Refining Company that its income and excess profits taxes for the calendar year 1917 had been recomputed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917, and that an additional tax of \$6,365.00 had been determined for said year and proposed for assessment. (Par. IV, Stip.)

V.

“That the additional income and excess profits tax of the Trumble Refining Company for the year 1917 in the sum of \$6,365.00, as computed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917, were assessed by the Commissioner of Internal Revenue on May 17, 1920. (Par. V, Stip.)

VI.

“That on June 17, 1920, Trumble Refining Company filed a claim for abatement of the additional taxes, computed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917, and assessed by the Commissioner of Internal Revenue on May 17, 1920, in the sum of \$6,365.00. (Par. V, Stip.)

VII.

“That on July 2, 1920 the Trumble Refining Company filed a claim for the refund of \$9,749.80, income and excess profits taxes paid by it for the calendar year 1917, on June 14, 1918. (Par. VII, Stip.)

VIII.

“That on December 13, 1921, said claim for abatement and said claim for refund filed by the Trumble Refining Company relative to its 1917 income and excess profits taxes were rejected by the Commissioner of Internal Revenue. (Par. VIII, Stip.)

IX.

“That no suit for the recovery of any part of the tax paid by the Trumble Refining Company for the calendar year 1917 was commenced within two years after December 13, 1921. (Comp.)

X.

“That on January 21, 1922, the Trumble Refining Company filed a second claim for the abatement of the additional tax assessed against it for the calendar year 1917.

XI.

“That on February 5, 1923, the Commissioner of Internal Revenue advised the Trumble Refining Company in writing that its income and excess profits tax had been redetermined under the Special Assessment provisions of Section 210 of the Revenue Act of 1917, and that an over-assessment of \$151.17 resulted. Said overassessment was abated. (Pars. XII-XIII, Stip., Ex. K.)

XII.

“That on May 22, 1923, the Trumble Refining Company paid the additional tax in the sum of \$6,213.83, determined to be due from it under the Special Assessment provisions of Section 210 of the Revenue Act of 1917. (Par. XVI, Stip.)

XIII.

“That no claim for the refund of any part of the additional tax for the year 1917 paid by the Trumble Refining Company on May 22, 1923, was filed within five years thereafter. (Comp. Par. XVIII, Stip.)

XIV.

“That on April 25, 1929, the Trumble Refining Company filed a claim for refund of the taxes paid by it for the calendar year 1917 on the 14th day of June, 1918, and the 22nd day of May, 1923. (Par. XVIII, Stip.)

XV.

“That on July 25, 1930, the Commissioner of Internal Revenue notified the Trumble Refining Company in writing that its claim for refund of 1917 taxes filed on April 25, 1929, had been rejected. (Par. XIX, Stip.)

XVI.

“That the Trumble Refining Company’s income and excess profits tax for the year 1918 was computed under the Special Assessment provisions of Section 328 of the Revenue Act of 1918. (Plf. Ex. 6, Govt. Ex. C.)

“CONCLUSIONS OF LAW

“From the foregoing Findings of Fact the Court makes the following Conclusions of Law :

I.

“That no action for the recovery of any part of the sum of \$11,870.88 paid by the Trumble Refining Company on June 14, 1918, as income and excess profits taxes for the calendar year 1917, was commenced within five years from the payments of said tax or any part thereof, nor within two years from December 13, 1921, the date upon which the Commissioner of Internal Revenue rejected the claim for refund filed by the taxpayer on July 2, 1920, and that the plaintiffs herein are barred by the provisions of Section 3226 of the Revised Statutes of the United States from recovering any part of the said tax paid on June 14, 1918.

II.

“That no claim for the refund of the sum of \$6,213.83, paid by the Trumble Refining Company on May 22, 1923, as additional income and excess profits taxes for the calendar year 1917 was filed within five years from the payment of said tax or any part thereof, and that the plaintiffs herein are barred by the provisions of Section 284(b) (1)(2) of the Revenue Act of 1926 from a recovery in this action of any part of said tax paid on May 22, 1923.

III.

“That the tax involved in this action was determined and assessed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917, and that this Court has no jurisdiction to review the determination of said tax made by the Commissioner of Internal Revenue.

 UNITED STATES DISTRICT JUDGE.

Presented, refused, and exception noted in favor of defendant this day of, 1937.”

Subsequently, and on the 2nd day of August, 1937, the Court entered the following Minute Order:

“(Date, Title of Court and Cause)

“This cause coming on for hearing on motion of defendant for arrest of Judgment and Dismissal of Action; A. Calder Mackay, Esq., appearing for the plaintiffs; Eugene Harpole, Esq., appearing for the defendant;

“Attorney Harpole argues in support of motion; attorney Mackay argues in opposition thereto; whereupon the Court orders that the said motion be submitted.”

On the 6th day of December, 1937 the following Minute Order was entered by the Court:

“(Title of Court and Cause)

“MINUTE ORDER, JUDGE HOLLZER’S CALENDAR, December 6, 1937.

“Good cause appearing therefor, it is ordered that the submission of this cause be vacated and the same be placed on the calendar on December 13, 1937, at 10 A. M. for consideration of revised motions respecting findings of fact, conclusions of law and judgment.”

On December 6, 1937 the following communication was directed to counsel for the parties from the chambers of the United States District Judge having the case under consideration:

“December 6, 1937

“To the attorneys in Gutzler vs Welch:

“A minute order has this day been entered vacating the submission of the above entitled matter and placing the cause on the calendar for next Monday at 10 AM. Judge Hollzer wishes to advise you that the purpose of this order is to enable the attorneys, in the interim, to prepare revised findings of fact and conclusions of law, combining all of such findings and conclusions heretofore proposed by either side respecting which there is no controversy, and adding thereto such additional findings and conclusions as the attorneys contend ought to be incorporated therein.

Yours very truly,

Bernice Morris,
Secretary to Judge Hollzer.”

fendant, and order is entered stating that Findings III, VIII, XVIII and XXI stand as modified pursuant to stipulation, and exception is noted to the defendant. Exception is noted to the defendant on Findings XI, XII, XIII, XVI, XVII and XXII. Finding IX is corrected pursuant to stipulation and said Finding and the rest of the Findings accepted by the Defendant.

“It is further ordered that defendant’s proposed Conclusions of Law I and II, be rejected and exception noted, and decision is reserved on Conclusion III. The Defendant is ordered to file a short memorandum as to how, in the face of the Findings in their final form, the Government applies the last decision of the Supreme Court. The Court orders the plaintiffs to revamp the Findings proposed by them, setting forth the Conclusions on a separate page, following the mechanics the Court suggested regarding the revamping of the Findings. The Court further orders the defendant’s proposed Findings XIII and XIV rejected and exception noted to the defendant.”

Subsequently and on or about the 18th day of January, 1938 the plaintiffs prepared, served and presented to the Court Special Findings of Fact and Conclusions of Law, together with a request for the adoption thereof in the words and figures as follows:

“(Title of Court and Cause)

“REQUEST BY PLAINTIFFS FOR FINDINGS OF
FACT AND CONCLUSIONS OF LAW

“Come now the plaintiffs above named and hereby request the Court, that in rendering and making its judgment in the above entitled cause, which has been submitted to the Court, said Court make specific Findings of Fact and Conclusions of Law upon the issue included in said cause, as set forth in the proposed Findings of Fact and Conclusions of Law hereto attached.

“Dated: January 12, 1938.

THOMAS R. DEMPSEY

Thomas R. Dempsey

A. CALDER MACKAY

A. Calder Mackay

Attorneys for Plaintiffs.

“Approved as to form as provided by Rule 44, except as to Finding #XXVIII:

BEN HARRISON – E. H.

United States Attorney

E. H. MITCHELL – E. H.

Assistant United States Attorney

EUGENE HARPOLE

Special Attorney, Bureau of
Internal Revenue,

Attorneys for Defendant.

“FINDINGS OF FACT

I.

“That the defendant, the United States of America, was, during all times material to this action, and still is, a sovereign body politic.

II.

“That the Trumble Refining Company was incorporated under the laws of the State of Arizona on or about July 13, 1910, and existed as a corporation until on or about March 24, 1930. That the said Trumble Refining Company was duly and regularly qualified to do business in the State of California and its principal place of business was located at Los Angeles, California. That on or about March 24, 1930 said Trumble Refining Company was duly and regularly dissolved and plaintiffs are now duly appointed, qualified and acting trustees in dissolution of said corporation and are empowered and entitled to institute and maintain causes of action for and on behalf of said Trumble Refining Company.

III.

“That the Trumble Refining Company within the time allowed by law and on March 29, 1918 and April 20, 1918, filed with the then Collector of Internal Revenue, John P. Carter, its original and amended income and excess profits tax returns, respectively, for the year 1917 wherein it disclosed a gross income of \$97,503.11, deductions of \$8,033.57 and a net taxable income of \$89,469.54,

which resulted in a tax liability, computed under Section 209 of the Revenue Act of 1917, of \$11,870.68, which on June 14, 1918 was paid to the said Collector of Internal Revenue.

IV.

“In determining its net taxable income as shown on said last mentioned return Trumble Refining Company inadvertently failed and neglected to take as a deduction from its gross income the exhaustion sustained upon its patent license agreements.

V.

“That the said Trumble Refining Company from the time of its inception to and including the year 1917 was the owner and in possession of certain patent license agreements which on March 1, 1913 had a fair market value of \$850,000.00 and a remaining useful life from March 1, 1913 of eleven years, eight months and twenty days, and was therefore, entitled, in the determination of its net taxable income, to an annual deduction of \$72,511.90, for the exhaustion of said patent license agreements. That the Trumble Refining Company's net taxable income for the year 1917 was the sum of \$16,957.64.

VI.

“That the invested capital of the Trumble Refining Company for the year 1917, as computed under the provisions of Section 207 of the Revenue Act of 1917, is the sum of \$67,760.17.

VII.

“That by letter dated February 21, 1920 the Commissioner of Internal Revenue proposed additional taxes against the Trumble Refining Company for the year 1917 in the sum of \$6,365.00; in said letter of February 21, 1920 the Commissioner advised the Trumble Refining Company that in his opinion its business was of such a character as normally to require a substantial capital investment and the income was attributable to the employment of capital, and that therefore the tax liability of Trumble Refining Company could not properly be determined under the provisions of Section 209 of the Revenue Act of 1917; in said letter the Commissioner furthermore advised the Trumble Refining Company that in his opinion a large part of the Trumble Refining Company’s invested capital could not be included under the statutory requirements for tax purposes and that therefore he had computed the tax under the provisions of Section 210 of the Revenue Act of 1917.

VIII.

“That the additional taxes of \$6,365.00 so computed by the Commissioner were based upon a net income of \$89,469.54 – the net income reported by the Trumble Refining Company in its original return which was erroneously computed without allowance for the exhaustion of its patent rights.

IX.

“That the additional income and excess profits tax of the Trumble Refining Company for the year 1917 in the sum of \$6,365.00, as computed under the Special Assessment

provisions of Section 210 of the Revenue Act of 1917 and proposed in said letter of February 21, 1920 were assessed by the Commissioner of Internal Revenue on May 17, 1920.

X.

“That thereafter and on or about June 17, 1920 the Trumble Refining Company filed an amended income tax return for the year 1917 wherein it claimed a deduction for the exhaustion of its patent license agreements or royalty contracts in the sum of \$54,121.42 based upon a March 1, 1913 value of \$811,821.36 and wherein it disclosed an income tax liability of only \$2,120.88

XI.

“That as a part of said last mentioned amended return the Trumble Refining Company on June 17, 1920 filed a claim for abatement of the said assessment made on May 17, 1920 of additional taxes in the sum of \$6,365.00 for the year 1917.

“That as a part of said last mentioned amended return and said claim for abatement the Trumble Refining Company on or about July 2, 1920 filed its claim for refund demanding the return to it on account of the overpayment of taxes by it for the year 1917 of the sum of \$9,749.80.

XII.

“That during August, 1921, the Commissioner of Internal Revenue through his Internal Revenue Agent at Los Angeles caused an investigation to be made in the matter

of said amended return, said claim for refund and said claim for abatement, and as a result of such investigation additional income and excess profits taxes of \$40,289.98 for the year 1917, and also large sums for the years 1918, 1919 and 1920 were proposed; that thereafter and under date of December 13, 1921 the Commissioner of Internal Revenue advised the Trumble Refining Company that its claim for refund filed on July 2, 1920, and its claim for the abatement of the taxes proposed by the Commissioner in his letter of February 21, 1920 were rejected.

XIII.

“That on or about January 13, 1922 a demand for the payment of said additional income and excess profits taxes of \$6,365.00 covered by the aforementioned claim for abatement and the Commissioner’s letter dated February 21, 1920, together with accrued interest of \$1,082.05 aggregating \$7,447.05, was made upon the Trumble Refining Company by the Collector of Internal Revenue for the Sixth Collection District of California. That on or about January 21, 1922 a second claim for abatement of said additional taxes for the year 1917 in the sum of \$6,365.00 was filed with the Collector of Internal Revenue for the Sixth Collection District of the State of California.

XIV.

“That on or about February 1, 1922 the Trumble Refining Company filed with the Commissioner of Internal Revenue a comprehensive brief and formal protest against the additional income and excess profits taxes proposed

and set forth in the Revenue Agent's report, made by Revenue Agent Degele, dated August 17, 1921 for the years 1917 to 1920, inclusive, which brief and protest were prepared by said company's tax consultant, dealing with the subject matter of assessment of Federal taxes against it for the years 1917 to 1920, inclusive; that in and by said brief said company protested against the proposed additional taxes for each of the last mentioned years; that the principal contention discussed in said brief, and the one which said company asserted was applicable to, and affected alike each of the years 1917 to 1920, inclusive, was its contention that it was entitled to an annual deduction of \$54,121.42 from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements; that said brief contained, among other things, a computation of Federal income taxes for the year 1917, and also showed and claimed that the total tax due the United States Government from the Trumble Refining Company for the year 1917 amounted to the sum of \$2,091.59 and that it had paid a Federal tax for that year amounting to \$11,870.68, and that there was a refund due to said company for said year of \$9,679.09.

XV.

“That on December 9, 1922 the Trumble Refining Company's income tax consultant, Mr. E. P. Adams, conferred with one of the officials of the Bureau of Internal Revenue, said official being then in charge of the Special Audit Section; that at said conference said company's tax consultant requested a hearing on the subject of said com-

pany's taxes for the years 1917 to 1920, inclusive; that said official responded that said Bureau of Internal Revenue was not yet ready to take up the matter of the company's taxes for all of those years but would hold in abeyance the consideration and final determination of the tax liability for 1917 until said company's taxes for the remaining years could also be reviewed and finally determined. That at the request of said official, confirmed in writing by the Commissioner of Internal Revenue in a letter dated January 19, 1923, the Trumble Refining Company on or about February 1, 1923 executed and filed with the Commissioner of Internal Revenue an income and excess profits tax waiver, being an unlimited waiver of the statute of limitations governing the time within which the Commissioner could make additional assessments of taxes against said company for the year 1917.

XVI.

"That on February 5, 1923 the Commissioner of Internal Revenue notified the Trumble Refining Company that its taxes for the year 1917 had been redetermined under the provisions of Section 210 of the Revenue Act of October 3, 1917 with the result that there appeared to be an overassessment of \$151.17 which was abated; that said proposed overassessment was based upon a net income of \$88,727.83, which was erroneously computed without allowance for the exhaustion sustained on patent rights; that thereafter and under date of February 23, 1923 and in response to said notice said Trumble Refining Company

wrote to the Commissioner of Internal Revenue calling attention to its said brief aforementioned and also calling attention to the aforementioned conference had by its tax consultant with an official of the Bureau on December 9, 1922, at which conference request had been made for a joint consideration of all the years involved at a hearing to be held in Washington, and in said response said company also requested that under these conditions further action be withheld in the matter of entering an overassessment for 1917 and also requested the privilege of filing additional data to prove Trumble Refining Company's right to a substantial deduction for the exhaustion of its patent rights.

XVII.

“That on or about May 15, 1923 the Trumble Refining Company telegraphed the Commissioner of Internal Revenue that in view of the understanding reached at said conference held December 9, 1922 and because the questions involved for the year 1917 affected all years, he should instruct the local Collector of Internal Revenue to withhold collection of additional taxes assessed for 1917 and that the Commissioner should fix a date for a conference at which all years might be considered; that thereafter and in response to said company's telegram, the Commissioner, on or about May 21, 1923, telegraphed said company that he had no authority to instruct the Collector to accept abatement claim to replace the claim rejected, but that a conference might be arranged on the 1917 case if a formal

protest were filed and that it was impracticable on later years until information submitted was considered and audit completed.

XVIII.

“That acting in conformity with the telegraphic instructions, the income tax consultant of Trumble Refining Company in the early part of May, 1924 held a conference with an official of the Commissioner of Internal Revenue’s office and at said conference said company’s representative delivered to said official a brief and protest containing additional data to support its right to an annual deduction from its gross income for the exhaustion of its patent license agreements based upon the March 1, 1913 value thereof.

XIX.

“That in said brief the Trumble Refining Company protested against the decisions of the Commissioner on which assessment of additional taxes had been made for the year 1917, and were proposed for 1918 and subsequent years; that in said brief additional arguments were presented in support of said company’s contention that it was entitled to the previously claimed annual deduction from income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements; that at said last mentioned conference said company’s representative discussed with said official said company’s contentions respecting taxes as to all of said years and that during said con-

ference said official had before him a file containing documents pertaining to said company's taxes for all of said years; that among such documents then in the hands of said official were said income tax returns, claims for refund and briefs, which briefs were filed on behalf of said company in February, 1922 and May, 1924, respectively, and also the Revenue Agent's report upon which additional assessments had been proposed to be made against said company for the years 1917 to 1920, inclusive.

XX.

"That on May 22, 1923 the Trumble Refining Company paid under protest to the then Collector of Internal Revenue Rex B. Goodcell the sum of \$7,860.19 covering said additional taxes for 1917 of \$6,213.83 (\$6,365.00 minus \$151.17) and accrued interest thereon of \$1,646.36.

XXI.

"That on July 14, 1924 the Committee on Appeals and Review of the Commissioner's office considered the subject matter of the assessment of additional taxes against said company and thereafter recommended to the Commissioner that the March 1, 1913 value of said patent license agreements of Trumble Refining Company be fixed at the sum of \$160,000.00 and that amortization be allowed to said Company on account of exhaustion of said patent license agreements on the basis of such valuation and that thereupon said recommendation was adopted by the Commissioner.

XXII.

“That the Committee on Appeals and Review also determined that the taxes of the Trumble Refining Company for the year 1918 should be computed under the provisions of Section 328 of the Revenue Act of 1918 and approved a rate of 41.37 per cent. That the actions of the Committee on Appeals and Review in this respect were approved by the Commissioner of Internal Revenue.

XXIII.

“That thereafter appeals were taken by the said Trumble Refining Company to the United States Board of Tax Appeals with respect to said company’s taxes for the years 1918 and 1920 to 1923, inclusive, and thereafter and on or about November 19, 1928 the Board of Tax Appeals in the cases of Trumble Refining Company of Arizona, Docket No. 11763 involving the year 1918, Docket No. 17492 involving the years 1920 and 1921, Docket No. 26434 involving the year 1922 and Docket No. 32151 involving the year 1923, rendered its decision (reported in 14 B. T. A. page 348) holding that the Trumble Refining Company on March 1, 1913 was the owner and in possession of patent license agreements which on March 1, 1913 had a fair market value of \$850,000.00 and a remaining useful life from March 1, 1913 of eleven years, eight months and twenty days, and was therefore entitled in the determination of its net taxable income to an annual deduction of \$72,511.90 for the exhaustion and depreciation of the value of said patent license agreements; that on the 30th day of October, 1929, the United States Board of

Tax Appeals entered its final order determining that the Trumble Refining Company was entitled to an annual deduction in the sum of \$72,511.90 for the exhaustion of its license agreements. That neither the Trumble Refining Company nor the plaintiffs took an appeal from the Board's decision and said decision became final.

XXIV.

“That on or about April 25, 1929 the Trumble Refining Company filed with the Commissioner of Internal Revenue its revised claim for refund in the sum of \$17,764.08 on account of taxes, plus interest thereon, paid for the year 1917 as aforesaid, said claim being computed in conformity with the aforementioned decision of the Board of Tax Appeals. That the Commissioner of Internal Revenue in his letter dated May 22, 1930, sent to the Trumble Refining Company, referred to claims for refund of the Trumble Refining Company for the years 1913, 1914, 1915, 1916, 1917, 1919, 1920, 1922 and 1923. In said letter the Commissioner stated that all of the claims for said years were based upon the contention that the Trumble Refining Company was entitled to an annual deduction from income of \$72,511.90 for depreciation of license agreements in view of the decision rendered by the United States Board of Tax Appeals for the years 1918, 1920, 1921, 1922 and 1923, Docket Numbers 11763, 17492, 26434 and 32151, wherein the Trumble Refining Company was allowed a March 1, 1913 value of \$850,000.00 on certain license agreements for depreciation purposes resulting in an an-

nual deduction of \$72,511.90 based upon an average life of eleven years, eight months and twenty days as at March 1, 1913. In said letter the Commissioner of Internal Revenue advised the Trumble Refining Company that its claims for refund for 1920, 1922 and 1923 had been allowed in accordance with the decision of the United States Board of Tax Appeals; also that said company's claims for refund for the years 1913, 1914, 1915, 1916 and 1919 were barred by the statute of limitations and that since no tax was paid for any of the last mentioned years within four years of the filing of the claim, the statute of limitations had run and no refund could be made. The letter also advised the taxpayer that since the Commissioner had not acquiesced in said decision of said Board of Tax Appeals with respect to the March 1, 1913 valuation of said license agreements for depreciation purposes, said company's contention could not be allowed for those years which were not pending before said Board, namely, 1913 to 1917, inclusive, and 1919. That the Commissioner's action in refusing to allow Trumble Refining Company a deduction of \$72,511.90 from its gross income for 1917 in accordance with the decision of the Board of Tax Appeals and in refusing to allow the refund due as a result of such allowance was arbitrary.

XXV.

“That the Commissioner of Internal Revenue in his letter to the Trumble Refining Company under date of November 3, 1930 for the first time stated or took the

position in his negotiations with said Trumble Refining Company to the effect that a reopening of its claim for refund on account of 1917 taxes was prohibited and that the period for bringing suit thereon had expired, and at no time did the Commissioner advise the Trumble Refining Company that its refund for 1917 could not be allowed because its taxes were properly computed under the provisions of Section 210 of the Revenue Act of 1917.

XXVI.

“That on July 25, 1930 the Commissioner of Internal Revenue notified the Trumble Refining Company in writing that its revised claim for refund filed on April 25, 1929 for the refund of 1917 taxes had been rejected.

XXVII.

“That at all times from and after June 17, 1920 the Trumble Refining Company in its negotiations and dealings with the Commissioner took the position that it was entitled annually to a deduction from its gross income by reason of the annual exhaustion of the March 1, 1913 value of its patent license agreements, such annual deduction being claimed to be in excess of the sum of \$54,000.00; that the Commissioner’s rejection on December 13, 1921 of said company’s original claim for refund was vacated and set aside, and that said claim was reopened and reconsidered and was not rejected until July 25, 1930; that the Commissioner of Internal Revenue from the time the Trumble Refining Company filed its amended income

tax return in June, 1920, disclosing that it had overpaid its taxes and was entitled to a refund for the taxes so overpaid, up to and until the date of the rejection of its revised claim considered the data and arguments submitted by the Trumble Refining Company and held in abeyance a final determination of the net taxable income of the Trumble Refining Company for the year 1917.

XXVIII.

“That the Trumble Refining Company at no time requested or acquiesced in a determination of its excess profits taxes for the year 1917 in accordance with the provisions of Section 210 of the Revenue Act of October 3, 1917, and at all times material to this action protested the determination of its taxes under said section, and at all times protested the Commissioner’s determination that its net taxable income was \$89,469.54 or \$88,727.83 or any sum in excess of \$16,957.64; that the Commissioner was adequately apprised, prior to the making of his special assessment, of the various grounds upon which error was claimed in his computation of net income and tax; that the Commissioner never took the position that his special assessment made under the provisions of Section 210 of the Revenue Act of 1917 concluded the matter, but on the contrary kept the case open and kept on re-examining the factors essential to determine the net taxable income of Trumble Refining Company for the year 1917; that the Commissioner’s determinations to assess Trumble Refining Company under the provisions of Section 210 of the Revenue Act of October 3, 1917 made by him in his letters of February 21, 1920 and February 5, 1923 were vacated and set aside and at no time has the Commissioner of Internal Revenue made a final determination that the Trumble Re-

fining Company's income tax liability should be computed under the provisions of Section 210 of the Revenue Act of October 3, 1917.

XXIX.

"That neither said John P. Carter, nor said Rex B. Goodcell were at the commencement of this suit in the employ of the Federal Government in the capacity of Collector of Internal Revenue for the Sixth Collection District, said John P. Carter having resigned on the 5th day of March, 1922 and Rex B. Goodcell having resigned on the 5th day of April, 1926.

XXX.

"That no action upon the claims hereinbefore referred to, other than as herein set forth, has been taken before Congress or before any of the departments of the Government of the United States, or in any court other than by the original and the amended petitions filed herein; that plaintiffs are now the sole owners thereof.

XXXI.

"That the correct tax liability of the Trumble Refining Company for the year 1917 is the sum of \$3,389.19 and that the Trumble Refining Company overpaid its taxes for the year 1917 by the total sum of \$16,341.68; that there is now due and owing to these plaintiffs for taxes thus overpaid for the year 1917 the total sum of \$16,341.68, together with interest at the rate of 6% from the dates paid, \$6,213.83 having been paid on May 22, 1923, together with interest of \$1,646.36, or a total of \$7,860.19, and the balance thereof, to wit, \$8,481.49 having been paid on June 14, 1918.

“CONCLUSIONS OF LAW.

“The premises considered, the Court concludes as a matter of law as follows:

I.

“That subsequent to the original rejection of said company’s first claim for refund and first claim for abatement, that is to say, that subsequent to December 13, 1921 and prior to February 1923, and likewise subsequent to February 1923, the Commissioner reopened and kept reopened and continued to give further consideration to said company’s claims and contentions respecting taxes paid and also respecting additional taxes proposed to be assessed for the year 1917; that said company’s claims and contentions respecting such taxes were still pending before and under consideration by the Commissioner on the date, to wit, April 25, 1929, when said company filed its revised claim for refund, and that said company’s claims and contentions respecting such taxes were finally passed upon and determined by the Commissioner when he rejected said revised claim for refund.

II.

“That the Commissioner’s letters of February 21, 1920 and February 5, 1923, advising the Trumble Refining Company that its taxes had been computed under Section 210 of the Revenue Act of 1917 were not regarded by the Commissioner as final determinations of its tax liability, the essential factor, to wit, the net income of the Trumble Refining Company not then having been finally determined, but on the contrary the Commissioner kept the case open and kept re-examining the situation; that the Commissioner’s act on or about July 14, 1924 of determining that

the Trumble Refining Company's patent license agreements had a March 1, 1913 value of \$160,000.00, vacated and set aside whatever determination he had made that the Trumble Refining Company's tax liability should be determined under the provisions of Section 210 of the Revenue Act of October 3, 1917.

III.

"That the claim herein sued upon was filed within the time allowed by law.

IV.

"That this Court has jurisdiction to hear and determine this proceeding.

V.

"That the plaintiffs are entitled to have refunded to them and to recover from the defendant:

"(a) The sum of \$8,481.49, together with interest thereon at the rate of six per cent (6%) per annum from June 14, 1918; and

"(b) The sum of \$7,860.19, together with interest thereon at the rate of six per cent (6%) per annum from May 22, 1923.

"Let judgment be entered accordingly and let proper exceptions by the defendant to the aforesaid findings and conclusions be noted.

"Dated this day of, 1938.

.....
Judge."

Thereafter and on the 31st day of May, 1938 the Court accepted the proposed Findings of Fact and Conclusions of Law submitted by the plaintiffs and adopted, made and entered the same as its Findings of Fact and Conclusions of Law; denied the defendant's Motion for Arrest of Judgment and Dismissal of action and rejected the Special Findings of Fact and Conclusions of Law submitted by the defendant, and on May 31, 1938, the following Minute Order was duly made and entered:

“(Title of Court and Cause)

“MINUTE ORDER, JUDGE HOLLZER'S CALENDAR, MAY 31, 1938.

“It is ordered that the findings and judgment as proposed by defendant be rejected. An exception is allowed to defendant.

“(Copies to counsel)

“(Note to Counsel: Judge Hollzer has today signed the judgment as proposed by plaintiffs, and has inserted at Line 27, page one, ‘ten thousand one hundred fifty-two and 7/100 (\$10,152.70)’; at Line 30 of same page, ‘seven thousand and eighty and 63/100 (\$7,080.63)’; at Lines 1 and 2, page 2, ‘thirty-three thousand, five hundred and seventy-five and 01/100 (\$33,575.01)’.)”

The following Orders were made in the above entitled matter extending the time and the term within which to prepare, serve and file Bill of Exceptions:

That on the 7th day of June, 1938, an Order having been made in the above entitled matter which, omitting the title of Court and Cause was in the words and figures as follows, to-wit:

“(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS.

“On Motion of Ben Harrison, United States Attorney for the Southern District of California, E. H. Mitchell, Assistant United States Attorney, and Armond Monroe Jewell, Assistant United States Attorney, for the Southern District of California, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and good cause appearing therefor,

“IT IS ORDERED that the time within which the defendant herein may serve and file its proposed bill of exceptions is hereby extended to and including the 31st day of August, 1938.

“Dated this 6th day of June, 1938.

H. A. HOLLZER
UNITED STATES DISTRICT JUDGE.

FILED

June 7, 1938

R. S. ZIMMERMAN, Clerk,
By R. B. Clifton, Deputy Clerk.”

That on the 30th day of August, 1938, an Order having been made in the above entitled matter which, omitting the title of Court and Cause, was in the words and figures as follows, to-wit:

“(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS

“On motion of Ben Harrison, United States Attorney for the Southern District of California, E. H. Mitchell, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and good cause appearing therefor,

“IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including the 31st day of October, 1938.

“Dated: August 30, 1938.

HARRY A. HOLLZER
UNITED STATES DISTRICT JUDGE”

That on the 30th day of August, 1938, an Order having been made in the above entitled matter which, omitting the title of Court and Cause, was in the words and figures as follows, to-wit:

“(Title of Court and Cause)

“ORDER EXTENDING TERM AND TIME

“Upon motion of the Defendant, and good cause appearing thereof,

“IT IS ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Time and the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including October 31, 1938, and the time therefor is extended accordingly.

“Dated: August 30, 1938.

HARRY A. HOLLZER
UNITED STATES DISTRICT JUDGE.”

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

A. J. GUTZLER, F. M. McDON-)	
NELL, L. T. BARNESON, J. LES-)	
LIE BARNESON and FRANK L.)	
A. GRAHAM, Trustees for Trumble)	
Refining Company, a dissolved cor-)	
poration,)	
)	
	)	Plaintiffs,) No. 5767-H
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

STIPULATION RE: APPROVAL OF BILL OF
EXCEPTIONS

IT IS HEREBY STIPULATED AND AGREED by and between attorneys for plaintiffs and defendant that the foregoing Bill of Exceptions has been presented in time and that it may be approved, allowed and settled by the Judge in the above entitled Court as correct in all respects.

Dated: This 20th day of Oct., 1938.

Thomas R. Dempsey

Thomas R. Dempsey

A. Calder Mackay

A. Calder Mackay

Attorneys for Plaintiffs.

Ben Harrison – E. H.

Ben Harrison,

United States Attorney.

E. H. Mitchell – E. H.

E. H. Mitchell,

Asst. U. S. Attorney

Eugene Harpole

Eugene Harpole,

Special Attorney for the
Treasury Department.

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

A. J. GUTZLER, F. M. McDON-)	
NELL, L. T. BARNESON, J. LES-)	
LIE BARNESON and FRANK L.)	
A. GRAHAM, Trustees for Trumble)	
Refining Company, a dissolved cor-)	
poration,)	
)	
Plaintiffs,	)	No. 5767-H
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER APPROVING AND SETTLING BILL OF
EXCEPTIONS

The foregoing Bill of Exceptions duly proposed and agreed upon by counsel for the respective parties is correct in all respects, has been presented in time and is hereby approved, allowed and settled and made a part of the record herein and said Bill of Exceptions may be used by the parties, plaintiffs and defendant, upon any appeal taken by either parties, plaintiffs or defendant.

Dated: This 22 day of October, 1938.

H. A. Hollzer
UNITED STATES DISTRICT JUDGE.

[Endorsed]: Filed Oct. 24, 1938. R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

A. J. GUTZLER, F. M. McDON-)	
NELL, L. T. BARNESON, J. LES-)	
LIE BARNESON and FRANK L.)	
A. GRAHAM, Trustees for TRUM-	)	No. 5767-H
BLE REFINING COMPANY, a)	
dissolved corporation,	)	PETITION
Plaintiffs,	)	FOR APPEAL
	)	FROM
	)	JUDGMENT
v.	)	ENTERED
	)	MAY 31, 1938
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

TO THE ABOVE ENTITLED COURT AND TO
HONORABLE HARRY HOLLZER, JUDGE
THEREOF:

Your petitioner, the defendant in the above entitled case, feeling aggrieved by the Judgment as entered herein in behalf of said plaintiffs on May 31, 1938, prays that this Appeal be allowed and that Citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly

authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the Rules of such Court in such cases made and provided and in connection with this petition, petitioner hereby presents Assignment of Errors dated August 29, 1938.

Dated: August 29, 1938.

Ben Harrison – EH
BEN HARRISON,
United States Attorney

E. H. Mitchell – EH
E. H. MITCHELL,
Asst. U. S. Attorney

Eugene Harpole
EUGENE HARPOLE,
Special Attorney for the
Treasury Department.

Attorneys for Defendant.

[Endorsed]: Filed Aug. 30, 1938. R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

The Defendant and Appellant above named makes and files the following Assignment of Errors upon which it will rely in the prosecution of its appeal from the Judgment of this Court entered herein on the 31st day of May, 1938:

I.

The Court erred in rendering judgment against the defendant and in favor of the plaintiffs in the amount \$33,575.01, together with interest, for the reason that the Court had no jurisdiction of the subject matter of this action, the tax sought to be recovered having been assessed under the special assessment provisions of Section 210 of the Revenue Act of 1917.

II.

The Court erred in over-ruling and denying the defendant's motion for judgment for the reason that there was no substantial or sufficient evidence before the Court upon which to predicate a judgment for the plaintiffs and from said evidence the Court should have concluded, held and found as follows:

1. That no action for the recovery of any part of the sum of \$11,870.88 paid by the Trumble Refining Company on June 14, 1918, as income and excess profits taxes for the calendar year 1917, was commenced within five years from the payments of said tax or any part thereof,

nor within two years from December 13, 1921, the date upon which the Commissioner of Internal Revenue rejected the claim for refund filed by the taxpayer on July 2, 1920, and that the plaintiffs herein are barred by the provisions of Section 3226 of the Revised Statutes of the United States from recovering any part of the said tax paid on June 14, 1918;

2. That no claim for the refund of the sum of \$6,213.83, paid by the Trumble Refining Company on May 22, 1923, as additional income and excess profits taxes for the calendar year 1917 was filed within five years from the payment of said tax or any part thereof, and that the plaintiffs herein are barred by the provisions of Section 284(b)(1)(2) of the Revenue Act of 1926 from a recovery in this action of any part of said tax paid on May 22, 1923;

3. That the tax involved in this action was determined and assessed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917, and that this Court has no jurisdiction to review the determination of said tax made by the Commissioner of Internal Revenue;

4. That the defendant in this action is entitled to judgment against the plaintiffs for its costs.

III.

The Court erred in denying the defendant's motion for Arrest of Judgment and Dismissal of the action, for the reason that the Court had no jurisdiction on the subject matter of this action, the tax sought to be recovered hav-

ing been assessed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917.

IV.

The Court erred in adopting its Conclusion of Law numbered I, for the reason that said Conclusion of Law is not supported by the facts found by the Court in that said Findings of Fact numbered XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XXI, XXII and XXIII disclose that the claim for refund of 1917 taxes filed by the Trumble Refining Company on July 2, 1920, was rejected by the Commissioner of Internal Revenue on December 13, 1921, and that there was thereafter no reconsideration of said claim for refund by any officer of the Bureau of Internal Revenue possessed with the authority to reopen or reconsider refund claims, although there was thereafter elaborate consideration given to a proposal to assess additional taxes for the year 1918 and the Commissioner had the consideration of a claim for abatement of additional taxes assessed for the year 1917, which claim was filed on January 21, 1922, under advisement until February 5, 1923, when \$151.17 of the additional tax was abated. The Trumble Refining Company paid the balance of said additional tax assessed for the year 1917 on May 22, 1923 and filed no claim for the refund thereof within five years thereafter.

V.

The Court erred in adopting its Conclusion of Law numbered II, for the reason that said Conclusion of Law is not supported by the facts found by the Court in that

said Findings of Fact numbered XXI, XXII and XXIII failed to disclose that the Committee on Appeals and Review ever considered the tax liability of Trumble Refining Company for the year 1917, but on the contrary it is disclosed that only additional tax liability for the year 1918 was under consideration by the Commissioner of Internal Revenue on June 14, 1924, or at any other time subsequent to February 5, 1923.

VI.

The Court erred in adopting its Conclusion of Law numbered III, for the reason that said Conclusion of Law is not supported by facts found by the Court or evidence before the Court in that it appears from the Findings of Fact that none of the Trumble Refining Company's income tax for the year 1917 was paid subsequent to May 22, 1923 and the claim for refund sued upon was not filed until April 25, 1929 and after the time allowed by law for the filing of a claim for refund had expired.

VII.

The Court erred in adopting its Conclusion of Law numbered IV, for the reason that it appears from the evidence and the facts found by the Court that the tax involved was computed under the Special Assessment provisions of Section 210 of the Revenue Act of 1917 and that the Court is without jurisdiction to review the Commissioner's determination of said tax.

VIII.

The Court erred in adopting its Conclusion of Law numbered V, in that said Conclusion of Law is not supported by the facts found by the Court in the following respects:

(a) It has been found by the Court that the tax reported by the Trumble Refining Company on its 1917 corporate income tax return was paid on June 14, 1918, (Findings III); that a claim for the refund of this tax was filed July 2, 1920, (Findings XI), and it appears in the pleadings herein no suit was brought upon said claim within the statutory period of two years after its rejection;

(b) It has been found by the Court that the additional tax determined and assessed against the Trumble Refining Company for the taxable year 1917 was paid on May 22, 1923 (Findings XX) and that no claim for the refund thereof was filed until April 25, 1919, (Findings XXIV), or more than five years after said payment and subsequent to the time allowed by law for the filing of a claim for the refund of said tax paid on May 22, 1923.

IX

The Court erred in making its Findings of Fact numbered IV, V, VIII, XIV, XV, XVIII, XIX, XXI, XXII, XXIII, XXVII, XXVIII and XXXI, in that said Findings are not supported by the evidence before the Court and that the facts therein found relate to a proposed additional tax for the calendar year 1918 and not to any taxes paid for the year 1917.

X

The Court erred in adopting its Findings of Fact numbered XXIV, in that the evidence before the Court discloses that the claim for refund in the sum of \$17,764.08 filed on April 25, 1929 was an original claim for refund filed more than five years after the taxes involved had been paid and was not an amendment or revision of any claim for refund previously filed for taxes paid for the calendar year 1917.

XI

The Court erred in refusing to adopt the Findings of Fact and Conclusions of Law requested by the defendant, in that the same were in accordance with and required by the evidence before the Court.

DATED: August 29, 1938.

Ben Harrison – EH
BEN HARRISON,
United States Attorney

E. H. Mitchell – EH
E. H. MITCHELL,
Asst. U. S. Attorney

Eugene Harpole
EUGENE HARPOLE,
Special Attorney for the
Treasury Department.

Attorneys for Defendant.

[Endorsed]: Filed Aug. 30, 1938. R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER ALLOWING APPEAL

In the above entitled action, the defendant having filed its Petition for an Order allowing it to appeal from the Judgment entered in the above entitled action on May 31, 1938;

IT IS ORDERED that said appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby allowed to the defendant and that a certified transcript of the record, bill of exceptions, stipulations and pleadings and all proceedings herein be transmitted to said United States Circuit Court of Appeals.

DATED: August 30, 1938.

H. A. Hollzer
UNITED STATES DISTRICT JUDGE

[Endorsed]: Filed Aug. 30, 1938. R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

TO: R. S. ZIMMERMAN, Clerk of the United States
District Court, Southern District of California:

You are hereby requested to make a Transcript of Record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal allowed in the above-entitled cause, and to include in said Transcript of Record, the following papers:

1. Citation on Appeal;
2. First Amended Petition;
3. Copy of Minute Order of February 7, 1936;
4. Copy of Amendment to Amended Petition filed February 7, 1936;
5. Copy of Minute Order of February 11, 1936;
6. Answer to Amended Petition;
7. Court's Findings of Fact and Conclusions of Law;
8. Judgment;
9. Petition for Appeal;
10. Assignment of Errors on Appeal;
11. Order Allowing Appeal;
12. Bill of Exceptions;

13. This Praecipe;
14. Clerk's Certificate.

Dated: This 14th day of September, 1938.

Thomas R. Dempsey

Thomas R. Dempsey

A. Calder Mackay

A. Calder Mackay

Attorneys for Plaintiffs.

Ben Harrison – EH

BEN HARRISON,

United States Attorney

E. H. Mitchell – EH

E. H. MITCHELL,

Asst. U. S. Attorney

Eugene Harpole

EUGENE HARPOLE,

Special Attorney for the
Treasury Department.

Attorneys for Defendant.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Appellant and Appellee that the foregoing Praecipe may be filed and shall be used for the purpose of the preparation of the record upon Appeal in the above-entitled action; that in preparing the record herein the Clerk of the United States District Court may omit all endorsements except the endorsements of the filing date, from the papers requested in the foregoing Praecipe.

Thomas R. Dempsey

Thomas R. Dempsey

A. Calder Mackay

A. Calder Mackay

Attorneys for Plaintiffs.

Ben Harrison - EH

BEN HARRISON,

United States Attorney

E. H. Mitchell

E. H. MITCHELL,

Asst. U. S. Attorney

Eugene Harpole

EUGENE HARPOLE,

Special Attorney for the Bureau
of Internal Revenue

Attorneys for Defendant.

[Endorsed]: Filed Nov. 1, 1938. R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy. Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

TO THE CLERK OF SAID COURT:

Sir:

Please print sixty copies of the Transcript of Record on appeal in above entitled matter.

E. H. Mitchell A. R.
Assistant United States Attorney

[Endorsed]: Filed Nov 18 1938

[TITLE OF DISTRICT COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 408 pages, numbered from 1 to 408 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; first amended petition for recovery of income taxes; order of February 7, 1936, amendment to first amended petition; order of February 11, 1936; answer; request by plaintiffs for findings of fact and conclusions of law, and findings of fact; judgment; bill of exceptions; petition for appeal; assignment of errors; order allowing appeal, and praecipe.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of November, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of our Independence the One Hundred and Sixty-third.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.

